

STATE OF CONNECTICUT
SITING COUNCIL

* * * * *

NEW CINGULAR WIRELESS PCS, LLC * MAY 21, 2013
* (11:10 a.m.)
*

APPLICATION FOR A CERTIFICATE OF *
ENVIRONMENTAL COMPATIBILITY AND *
PUBLIC NEED FOR THE CONSTRUCTION, * DOCKET NO. 409A
MAINTENANCE AND OPERATION OF A *
TELECOMMUNICATIONS FACILITY *
LOCATED AT 8 BARNES ROAD, *
CANAAN (FALLS VILLAGE) *
CONNECTICUT *
*

* * * * *

BEFORE: ROBIN STEIN, CHAIRMAN

BOARD MEMBERS: Robert Hannon, DEEP Designee
Philip T. Ashton
Edward S. Wilensky (arrived 11:35 AM)
Daniel P. Lynch, Jr. (arrived 12:11 PM)
James J. Murphy, Jr.
Dr. Barbara Currier Bell

STAFF MEMBERS: Robert Mercier, Siting Analyst
Melanie Bachman, Staff Attorney

APPEARANCES:

FOR THE APPLICANT, NEW CINGULAR WIRELESS PCS, LLC:

CUDDY & FEDER LLP
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
BY: CHRISTOPHER B. FISHER, ESQUIRE
LUCIA CHIOCCHIO, ATTORNEY

FOR THE PARTY, PATTY AND GUY ROVEZZI:

PATTY AND GUY ROVEZZI (Pro Se)
30 Barnes Road
Falls Village, Connecticut 06031

FOR THE PARTY, CANAAN INLAND WETLANDS AND
CONSERVATION COMMISSION:

ELLERY W. SINCLAIR, CHAIRMAN
Canaan Inland Wetlands and
Conservation Commission
77 Main Street
New Canaan, Connecticut 06840

FOR THE PARTY, CANAAN PLANNING AND ZONING
COMMISSION:

FREDERICK J. LASER, CHAIRMAN
Canaan Planning and Zoning Commission
77 Main Street
Canaan, Connecticut 06040

FOR THE PARTY, MARC ROSEN AND SUSAN PINSKY:

MARC ROSEN AND SUSAN PINSKY (Pro Se)
Barnes Road
Falls Village, Connecticut 06031

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 . . .Verbatim proceedings of a continued
2 hearing before the State of Connecticut Siting Council in
3 the matter of an application by New Cingular Wireless
4 PCS, LLC, Docket No. 409A, held at Central Connecticut
5 State University, Institute of Technology and Business
6 Development, 185 Main Street, New Britain, Connecticut,
7 on May 21, 2013 at 11:10 a.m., at which time the parties
8 were represented as hereinbefore set forth . . .

9
10
11 CHAIRMAN ROBIN STEIN: Good morning ladies
12 and gentlemen. I'd like to call to order a meeting of
13 the Connecticut Siting Council on Docket No. 409A today,
14 Tuesday May 21, 2013 at approximately 11:10 a.m.

15 My name is Robin Stein and I'm Chairman of
16 the Siting Council.

17 This hearing is a continuation of a
18 hearing that was held on April 30, 2013 at the Lee
19 Kellogg School in Falls Village. It is held pursuant to
20 the provisions of Title 16 of the Connecticut General
21 Statutes and of the Uniform Administrative Procedure Act
22 upon a motion to reopen the final decision on a
23 application by New Cingular Wireless PCS, LLC for a
24 Certificate of Environmental Compatibility and Public

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 Need for the construction, maintenance, and operation of
2 a telecommunications facility located at 8 Barnes Road,
3 Canaan, also known as Falls Village, Connecticut.

4 This motion to reopen was filed with the
5 Council and the parties and intervenors to the original
6 proceedings on February 15, 2013. During a public
7 meeting of the Council held on March 9th -- I'm sorry --
8 on March 7, 2013, the Council reopened this docket
9 pursuant to Connecticut General Statute 4-181a(b) and
10 specifically limited this hearing to Council
11 consideration of changed conditions, revised tower site
12 location, and modified facility.

13 A verbatim transcript will be made of this
14 hearing and deposited with the Town Clerk's Office in the
15 Falls Village Town Hall for the convenience of the
16 public.

17 We will proceed in accordance with the
18 prepared agenda, copies of which are available here.

19 The first item we have is a motion from
20 the Applicant for administrative notice of the
21 Connecticut Department of Emergency Services and Public
22 Protection, Annual Report to the General Assembly 2012,
23 which is on page 7A of the hearing program. Do I have
24 any objections from any of the parties to the notice of

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 this document? Hearing and seeing none, that will be
2 administratively noticed.

3 Procedure -- or I guess the order we're
4 changing a little bit. As you may remember, I think we
5 were in the middle of the Council's questioning of the
6 Applicant when we broke at the last meeting. We will
7 resume that hopefully later today, but I guess there's a
8 request of several of the parties and we're going to
9 start with the appearance of Patty and Guy Rovezzi. Are
10 you --

11 MR. GUY ROVEZZI: Guy Rovezzi.

12 CHAIRMAN STEIN: Hmm?

13 MR. ROVEZZI: Guy Rovezzi.

14 CHAIRMAN STEIN: Okay. Sorry for my
15 mispronunciation. And we'll start by swearing --
16 swearing you in. Counsel. Please stand.

17 COURT REPORTER: Turn your microphone on
18 please.

19 MS. MELANIE BACHMAN: Please raise your
20 right hand.

21 (Whereupon, Guy Rovezzi was duly sworn
22 in.)

23 MS. BACHMAN: Thank you.

24 CHAIRMAN STEIN: Do -- do you have any

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 exhibits to enter or do you have a statement?

2 MR. ROVEZZI: I have a few questions and a
3 statement.

4 CHAIRMAN STEIN: Okay.

5 MR. ROVEZZI: A short statement.

6 CHAIRMAN STEIN: Okay, thank you for the
7 shortness of your statement.

8 MR. ROVEZZI: May I proceed? Okay --

9 CHAIRMAN STEIN: Yes.

10 MR. ROVEZZI: I just -- I just want to
11 state for the record that I still -- I stand behind all
12 of my original testimony and submissions. And the fact
13 that they are a matter of public record doesn't require
14 me to revisit those, so I'm going to just move on to a
15 few basic questions and then a very short statement, so I
16 appreciate your indulgence of those.

17 My first question to AT&T is -- whom am I
18 addressing my questions to?

19 MS. BACHMAN: It's not --

20 CHAIRMAN STEIN: I'll ask counsel to
21 answer.

22 MS. BACHMAN: This is not cross-
23 examination of the Applicant. That will occur after the
24 appearance of the Inland Wetlands and Conservation

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 Commission today. In the event that we're unable to
2 finish cross-examination of the Applicant, on June 11th
3 we have an additional date where we're going to allow the
4 Pinsky and Rosen party to appear because they were
5 unavailable, and we will clean up any other items. So I
6 would expect at June 11th you would have that opportunity
7 to cross-examine the Applicant. But right now the panel
8 that's up for cross is the Inland Wetlands Conservation
9 Commission.

10 MR. ROVEZZI: So may I just then make a
11 brief statement?

12 CHAIRMAN STEIN: Yes.

13 MR. ROVEZZI: Our government utilizes its
14 legislative authority to influence the behavior of the
15 private sector primarily by incentives or penalties.
16 There are incentives for such things as solar energy,
17 safer homes, and fuel efficient cars, and penalties for
18 mislabeling products, tax evasion, and violations of
19 public safety.

20 In a like manner, the FCC through its USF
21 ICC Transformation Order FCC11-161 is providing financial
22 incentives for the private sector to invest in
23 telecommunications technology that may otherwise be
24 unprofitable. It is unprofitable specifically in this

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 case because the population density in parts of Falls
2 Village may not warrant the investment. AT&T cites this
3 order exclusively in its motion to reopen the docket as
4 the basis for a change in condition. The FCC is not
5 mandating this investment or penalizing AT&T or any
6 private enterprise for its failure to provide
7 telecommunication services and certainly does not suggest
8 that through USF ICC Transformation Order FCC11-161 these
9 financial incentives supersede other legislative
10 regulations or public safety concerns or environmental
11 policy. Moreover, a legitimate argument can be made that
12 any specific data assembled by census block nationally,
13 including Falls Village, is done specifically to identify
14 what low population areas may be objectively deemed
15 eligible to receive Universal Service Funds.

16 On page 751 in its summary, USF ICC
17 Transformation Order FCC11-161 states, and I quote, "We
18 are experiencing a significant technological evolution as
19 networks are transitioning to internet protocol and
20 consumers are using multiple modes of communications,
21 sometimes simultaneously. Indeed, the underlying cause
22 of the reforms we implement today is due to the enormous
23 technological shift that has occurred in the last ten
24 years. One constant that I have seen however is that

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 consumers expect their state regulators will serve and
2 protect them. Moreover, those of us at the FCC need the
3 states' expertise and knowledge on the ground to properly
4 execute and operate our new Universal Service Funding
5 mechanism." End quote.

6 If there is a change in condition, the
7 change rests solely on the incentive itself offered by
8 the FCC through its application of Universal Service
9 Funds to this specific situation. ATT -- AT&T in
10 response to the Siting Council's interrogatory dated
11 April 15, 2013, Question 10, indicates that it does not
12 intend to utilize the incentive, which effectively
13 constitutes that the alleged change in condition does not
14 apply to them and renders USF ICC Transformation Order
15 FCC161 irrelevant to this application.

16 You have already given this application
17 due process and rendered a decision against the site. An
18 application denial that has been upheld in Federal Court.
19 The matter has been adjudged and I feel that reopening
20 the docket puts into question the court's jurisdiction
21 over the matter. Further, it potentially questions the
22 authority of the Siting Council itself and casts doubt on
23 its ability to render a decision that can't be challenged
24 by any loosely applied change in condition. A change in

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 condition applies equally to everyone who seeks to undo
2 Siting Council decisions, both in favor and against
3 telecommunications facilities. You are opening the door
4 to the possibility of having to reexamine a host of prior
5 decisions and create a procedural nightmare for the State
6 of Connecticut at the expense of the taxpayers. Thank
7 you for this opportunity to speak.

8 CHAIRMAN STEIN: We'll -- are there any
9 questions by the Council? First Mr. Mercier.

10 MR. ROBERT MERCIER: I have no questions.

11 CHAIRMAN STEIN: Senator Murphy.

12 MR. JAMES J. MURPHY, JR.: No questions,
13 Mr. Chairman.

14 CHAIRMAN STEIN: Mr. Ashton.

15 MR. PHILIP T. ASHTON: I'd like to ask one
16 if I can --

17 AUDIO TECHNICIAN: Microphone please.

18 MR. ASHTON: Yeah. With regard to changed
19 conditions are you cognizant or aware of any of the rules
20 and regulations in the zoning commission or IWCC in
21 Canaan?

22 MR. ROVEZZI: To the extent that I had
23 meetings with them and they have explained those to me,
24 on a limited basis, I would say yes.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. ASHTON: Okay. If an applicant is
2 turned down, can he come back in with the same proposal
3 at a later date?

4 MR. ROVEZZI: No.

5 MR. ASHTON: He's prohibited from coming
6 in forever with that same thing or is there a time
7 limit?

8 MR. ROVEZZI: There is no time limit to my
9 knowledge.

10 MR. ASHTON: That -- that's very unusual.
11 If he comes in with a modification is he prohibited from
12 bringing that in?

13 MR. ROVEZZI: If there is a modification,
14 then he can bring that in. But if there's no change in
15 condition --

16 MR. ASHTON: Well let's -- let's --
17 there's two things here; change in conditions and a
18 modification. Time goes by, the Applicant decides that
19 for better or worse he can revise his plan. Can he come
20 in again and present it to IWCC or the zoning
21 commission?

22 MR. ROVEZZI: He can.

23 MR. ASHTON: Okay. Thank you. Do you
24 think this Council should be the arbiter of federal

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 legislation?

2 MR. ROVEZZI: I'm not sure I understand
3 the question.

4 MR. ASHTON: Well specifically health
5 effects, do you think this Council should delve into
6 health effects, which the feds say they're reserved for
7 the feds?

8 MR. ROVEZZI: No.

9 MR. ASHTON: Thank you. Nothing further.

10 CHAIRMAN STEIN: Dr. Bell.

11 DR. BARBARA C. BELL: Thank you, Mr.

12 Chair. I have no questions.

13 CHAIRMAN STEIN: Mr. Hannon.

14 MR. ROBERT HANNON: I have no questions.

15 CHAIRMAN STEIN: We'll now go to cross-
16 examination by the Applicant.

17 MS. LUCIA CHIOCCHIO: Thank you, Chairman,
18 no questions.

19 CHAIRMAN STEIN: Okay. Then we'll go to
20 Mr. Sinclair. Do you have any questions?

21 MR. ELLERY SINCLAIR: Of Rovezzi?

22 CHAIRMAN STEIN: Yes.

23 MR. SINCLAIR: I do not.

24 CHAIRMAN STEIN: The Chairman of Planning

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 and Zoning, Mr. Laser. Is he -- is he here? No? Mark
2 Rosen and Susan Pinsky? Also not here. Okay --

3 MR. SINCLAIR: Mark -- Mark Rosen and
4 Susan Pinsky, Mr. Chairman, are out of the country at the
5 present time and so notified the Council.

6 CHAIRMAN STEIN: Yes, we understand that.
7 We -- we do our best to accommodate everybody --

8 (mic feedback)

9 MR. SINCLAIR: Oh, sorry. I apologize.

10 CHAIRMAN STEIN: Okay. Well thank you,
11 sir, you can step down.

12 (pause)

13 CHAIRMAN STEIN: Okay, we'll now go to the
14 appearance of the Town of Canaan Inland Wetlands and
15 Conservation Commission. And we'll begin with the --
16 let's see -- the swearing in of the -- of your witnesses,
17 Mr. Sinclair. Attorney Bachman. I guess just for the
18 record maybe if you could just name them first so we know
19 who's getting sworn in.

20 MR. SINCLAIR: (Indiscernible) --

21 COURT REPORTER: Microphone please.

22 MR. SINCLAIR: This is Susan Kelsey,
23 Secretary of the Inland Wetlands Commission. This is
24 Richard Calkins, RF --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 A VOICE: Walter Cooper --

2 MR. SINCLAIR: I'm sorry, Walter Cooper,
3 RF engineer. Dave Gumbart from the Nature Conservancy.
4 Then Richard Calkins, Civil Engineer. Starling Childs of
5 EECOS, an environmental consultant. And Greg Marlowe, a
6 quarry manager and here to speak to heavy equipment. And
7 I'm Chairman of the Inland Wetlands Commission.

8 MS. BACHMAN: Please raise your right
9 hand.

10 (Whereupon, The Town of Canaan Inland
11 Wetlands and Conservation Commission witness panel was
12 duly sworn in.)

13 MS. BACHMAN: Thank you.

14 CHAIRMAN STEIN: Mr. Sinclair, would you
15 begin by verifying the exhibits you have filed in this
16 matter and having -- oh -- (pause) -- for the
17 verification, Mr. Sinclair, you have offered the exhibits
18 listed under the hearing program as Roman Numeral IV, B-1
19 through B-11 for identification purposes. Is there any
20 objection to making these exhibits for identification
21 purposes only at this time?

22 MR. SINCLAIR: I believe there is none.

23 CHAIRMAN STEIN: Well I'm asking the other
24 people too to see if any of the other parties or the

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 Applicant object. Hearing and seeing none, there are a
2 series of questions I have to ask you. Mr. Sinclair, did
3 you prepare or assist in the preparation of Exhibits 1
4 through 11?

5 MR. SINCLAIR: Yes, I did.

6 CHAIRMAN STEIN: And each -- each person
7 then has to also give either an affirmative or not.

8 MS. SUSAN KELSEY: Yes, I did. Susan
9 Kelsey.

10 MR. WALTER COOPER: Yes, I did. Walter
11 Cooper.

12 MR. DAVID GUMBART: David Gumbart. Yes, I
13 did.

14 MR. RICHARD CALKINS: Richard Calkins.
15 Yes, I did.

16 MR. STARLING CHILDS: Starling Childs.
17 Yes, I did.

18 MR. GREG MARLOWE: Greg -- Greg Marlowe.
19 Yes, I did.

20 CHAIRMAN STEIN: Okay. We have to
21 continue this. Do you have any additions,
22 clarifications, deletions, or modifications to these
23 documents? And again just go down the --

24 MR. SINCLAIR: I do not.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. KELSEY: Susan Kelsey. I do not.

2 MR. COOPER: Walter Cooper. I do not.

3 MR. GUMBART: David Gumbart. I do not.

4 MR. CALKINS: Richard Calkins. I do not.

5 MR. CHILDS: Starling Childs. I do not.

6 MR. MARLOWE: Greg Marlowe. I do not.

7 CHAIRMAN STEIN: The next one is are these
8 exhibits true and accurate to the best of your knowledge?
9 Again -- that will teach you to have such a large group
10 of people, but go ahead.

11 MR. SINCLAIR: Yes, they are.

12 MS. KELSEY: Yes, they are.

13 MR. COOPER: Yes, they are.

14 MR. GUMBART: Yes, they are.

15 MR. CALKINS: Yes, they are.

16 MR. CHILDS: Starling Childs. Yes, they
17 are.

18 MR. MARLOWE: Greg Marlowe. Yes, they
19 are.

20 CHAIRMAN STEIN: Okay. The last group
21 question, do you offer these as full exhibits?

22 MR. SINCLAIR: Yes, I do. Ellery
23 Sinclair.

24 MS. KELSEY: Susan Kelsey. Yes, I do.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. COOPER: Walter Cooper. Yes, I do.

2 MR. GUMBART: David Gumbart. Yes, I do.

3 MR. CALKINS: Richard Calkins. Yes, I do.

4 MR. CHILDS: Starling Childs. Yes, I do.

5 MR. MARLOWE: Greg Marlowe. Yes, I do.

6 CHAIRMAN STEIN: Okay, thank you. Is
7 there any objection from the Applicant or any of the
8 other parties to these items previously marked for
9 identification being admitted as full exhibits to these
10 proceedings?

11 MS. CHIOCCHIO: Thank you, Chairman. No
12 objection to the Siting Council procedurally admitting
13 the Inland Wetlands and Conservation Commission exhibits
14 subject to cross-examination.

15 On behalf of AT&T, we do have a statement
16 though regarding some of the content contained in these
17 filings, and in particular the document entitled
18 Prehearing Brief from the IWCC. In our experience, we
19 have never seen a party or intervenor submit a prehearing
20 brief and are not aware of any procedural option afforded
21 for that by the Siting Council when not accompanied by a
22 motion. While the IWCC has not made any motions, we
23 understand that the prehearing brief has been adopted by
24 Mr. Sinclair as his testimony. As such, there appears to

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 be no basis for an objection to exclude the document.

2 We do, nevertheless, wish to point out
3 that there are numerous factually unsupported allegations
4 throughout the document, that it is largely opinioned
5 based and includes various legal terms of art such as
6 intentional omission or misrepresentation of facts. As
7 an intervenor, the IWCC has the right and opportunity to
8 cross-examine AT&T's expert witnesses, which is the
9 process to be used to elicit facts in testimony. And
10 until such time, such allegations based on the factually
11 unsupported opinion of the members of the IWCC is wholly
12 misplaced and should be reserved to any post-hearing
13 motions or briefs the IWCC chooses to submit. Thank
14 you.

15 CHAIRMAN STEIN: Thank you. We'll note
16 those comments and we will admit that as well as the
17 other exhibits for what they are worth.

18 (Whereupon, the Town of Canaan Inland
19 Wetlands and Conservation Commission Exhibit Nos. 1
20 through 11 were received into evidence.)

21 CHAIRMAN STEIN: So we'll now start with
22 cross-examination. Mr. Mercier.

23 MR. MERCIER: Thank you. In the response
24 to the Council interrogatories there was a question

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 regarding trails along Canaan Mountain. I think that was
2 Answer No. 2. If you could please elaborate on what the
3 Iron Trail is? Is that a hiking trail?

4 MR. SINCLAIR: If I may, I would like to
5 refer your question to my witness Starling Childs, who in
6 fact is -- has much more information on that than I do.
7 If -- if you would please.

8 MR. CHILDS: Yeah. In response to that,
9 having -- having seen the discussion in the previous
10 hearing in Falls Village relative to Blue Blaze hiking
11 trails, the -- the Iron Trail is a trail on map only at
12 this time, but -- but it's -- sections of it do already
13 exist and have.

14 It was a trail proposed with the Deputy
15 Commissioner David Leff in 2003, along with the
16 Connecticut Forests and Parks Association, whose sole
17 responsibility of maintenance of the Blue Blaze Trail
18 system in Connecticut exists through a phenomenal
19 volunteer network of hundreds of volunteers that maintain
20 825 miles of Blue Blaze trails. But it was all in part
21 of a negotiated purchase of land on top of Canaan
22 Mountain and access-ways of other lands and/or special
23 easements, if you will, to grant access for the citizens
24 of Connecticut to go from the former Iron Blast Furnaces

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 in Falls Village or along the Hollenbeck River over the
2 top of a mountain known locally and not on a topographic
3 map as Stone Man Mountain, where there's several stone or
4 large piles of stone, and then following the existing Old
5 Charcoal Trail network over the top of the mountain down
6 to the lower road Blast Furnace where the State has spent
7 several million dollars refurbishing the last of the
8 industrial monuments there on the lower road in -- I
9 think that's in North Canaan along the Blackberry River,
10 and that trail has yet to have a Blue Blaze on it, but it
11 has been walked by the Deputy Commissioner Leff when he
12 was in office, and it has been walked by the former head
13 of the CFPA. Prior to having both knees replaced, he
14 managed to get himself up the very steep gradient. And
15 what it does is it affords almost 360 degree views from
16 the top of Stone Man Mountain, which is at about -- I
17 don't have the actual elevation, but it's -- it's
18 probably around sixteen hundred feet plus, and breaks out
19 of the forest canopy onto bare rock ledge at the top of
20 the mountain and -- and allows one to see back over the
21 plateau of Canaan Mountain, but also off to the west, and
22 specifically looks right down onto the top of Cobble Hill
23 from that point. So the fact that that was something of
24 interest to the commission and certainly in the process

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 here, and I may have omitted in my statement, but I
2 certainly know of the trail as it's both designed and
3 will be implemented in time by a series of volunteers.

4 MR. MERCIER: Okay, so as I understand
5 it's a proposed trail. And you said it goes to the top
6 of a rock outcrop or some type of ledge system known as
7 Stone Man Mountain?

8 MR. CHILDS: Mmm-hmm.

9 MR. MERCIER: Is that --

10 COURT REPORTER: Is that a yes?

11 MR. CHILDS: That's a yes. I'm sorry.

12 MR. MERCIER: Is that area in close
13 proximity to Cobble Hill? I guess I'm looking at a topo
14 map and I'm just trying to determine the location. Is
15 that piece of Stone Man Mountain part of the Housatonic
16 State Forest?

17 MR. CHILDS: It is, yes.

18 MR. MERCIER: Okay.

19 MR. CHILDS: The Housatonic State Forest,
20 yes.

21 MR. MERCIER: Is it also in close
22 proximity to Under Mountain Road?

23 MR. CHILDS: It's directly -- it actually
24 discharges out onto Under Mountain Road down a very steep

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 westerly face, and would come out right at the
2 intersection of Mountain Road and Under Mountain Road,
3 yes.

4 MR. MERCIER: Is -- Mountain Road, is
5 that the road that goes up towards the Great Mountain
6 Forest?

7 MR. CHILDS: That's the Canaan Mountain
8 Road, right.

9 MR. MERCIER: Okay, I see it, yeah. So at
10 the intersection of that Canaan Mountain Road and Under
11 Mountain Road, just north of there is a Housatonic State
12 Forest block?

13 MR. CHILDS: There is, yes. And --

14 MR. MERCIER: Is that -- is that the one
15 you're referring to?

16 MR. CHILDS: That's what I'm referring to
17 because the State had no public access to that state
18 forest until they acquired for about a half a million
19 dollars the land immediately adjacent to it from Great
20 Mountain Forest to facilitate public access

21 MR. MERCIER: Okay, I understand the
22 parcel now. Thank you.

23 MR. CHILDS: Yeah.

24 MR. MERCIER: Mr. Gumbart --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. GUMBART: Yes --

2 MR. MERCIER: -- in regards to the Nature
3 Conservancy parcel along Cobble Hill and Wangum Brook,
4 could you please describe the habitat types there? Is it
5 a steep hillside? Is it marshland? What's actually
6 there please?

7 MR. GUMBART: Sure. Yes. David Gumbart
8 with the Nature Conservancy. The Nature Conservancy owns
9 what we call the Wangum Lake Brook Preserve. It's
10 located on Barnes Road in Falls Village. It goes from
11 the Wangum Lake Brook, which is a low-lying stream and
12 wetland area, and then proceeds upslope in -- gosh, I
13 guess it would be a southwesterly direction -- (mic
14 feedback) -- I don't know if I'm speaking too loud --

15 A VOICE: No, you're okay.

16 A VOICE: No.

17 MR. GUMBART: Uh -- (mic feedback) -- my
18 apologies -- so the low-lying areas, the stream and
19 wetlands, and a steep slope that leads up to the top of a
20 ridge, which would then -- I believe even higher up to
21 the top of Cobble Hill.

22 MR. MERCIER: Okay. Now when they
23 obtained the -- is this owned by the Conservancy?

24 MR. GUMBART: Yes, it is.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. MERCIER: Okay. When you obtained the
2 parcel, was it surveyed for wildlife and --

3 MR. GUMBART: When it was obtained, there
4 probably was. I was not there at the time when this
5 property was first protected, but the procedure of the
6 Nature Conservancy is to ensure it's aware of plants and
7 animals to the best of its ability on properties it
8 protects. Also we have a history of working closely with
9 the Department of Energy and Environmental Protection in
10 regards to learning what species and natural communities
11 may be present on a given piece of land. And so both
12 through our own surveying and sharing of information with
13 what's now the DEEP, we are aware of several rare species
14 on that property.

15 MR. MERCIER: Out of curiosity, do you --
16 do you continually research parcels such as this? Do
17 you do wildlife surveys every ten years or at some
18 interval?

19 MR. GUMBART: There's no particular
20 scheduled visits. There are certain plants that are
21 monitored by individuals other than the Nature
22 Conservancy. The New England Wildflower Society has a
23 program called the New England Plant Conservation Program
24 where a botanist and volunteers are assigned to look at

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 specific plants across New England. And assuredly there
2 are individuals who are amateur botanists who have been
3 on this and many other properties over the years.

4 MR. MERCIER: Okay, thank you. In
5 response -- the letter you provided attached to the
6 interrogatories there's a chart in there that lists
7 several species and there's something -- a column called
8 EO Rank. I was wondering what that meant?

9 MR. GUMBART: The ranking system formally
10 used by the Nature Conservancy, the EO rank is known as
11 element occurrence. And an element is a given species or
12 perhaps a full natural community with an assemblage of
13 species. And that's language that has been shared by the
14 Nature Conservancy in what are known as the Heritage
15 Programs across the country. And in the State of
16 Connecticut the Heritage Program is the Natural Diversity
17 Database of the DEEP. So EO is element occurrence.

18 MR. MERCIER: And what does the letter
19 designation refer to?

20 MR. GUMBART: A being the highest quality
21 of a given plant or natural community, on down to what I
22 believe is a D, being perhaps impaired.

23 MR. MERCIER: I see one that's not listed,
24 the Sharp-Lobed Hepatica. There's no designation there.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 Is there any particular reason?

2 MR. GUMBART: Honestly, I don't know.
3 Those records were put together before my time. The
4 information that was submitted comes from a Nature
5 Conservancy Report in 1996, and that would have taken
6 information on record with the Natural Diversity Database
7 at that time.

8 MR. MERCIER: That 1996 report, that was
9 prepared for this property?

10 MR. GUMBART: Yes.

11 MR. MERCIER: Okay. There's another
12 column, a GS rank?

13 MR. GUMBART: Mmm-hmm.

14 MR. MERCIER: Could you please elaborate?

15 MR. GUMBART: Global -- G&S stand for
16 global and state. So a species may have more importance
17 in the state than it does globally. And so those are
18 ranks, the G's and the S's that are assigned to any given
19 plant.

20 MR. MERCIER: Can you elaborate on the
21 numbers -- also are --

22 MR. GUMBART: The numbers would equate to
23 level of importance, 1 being the highest or rarest, and 5
24 being something relatively common.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. MERCIER: Reading through your filing
2 there were two species that were reported last seen in
3 1988. Is that on your particular property or in the
4 general area?

5 MR. GUMBART: I believe that would be on
6 the Nature Conservancy property that we own, yes.

7 MR. MERCIER: Okay. And there's a similar
8 one, I think it said 1996. So I assume that's the same
9 answer?

10 MR. GUMBART: Correct.

11 MR. MERCIER: Okay. Do you believe the
12 development of the tower on Cobble Hill above your
13 property -- adjacent to your property that is, would
14 affect any of the forest species listed on the Natural
15 Diversity Database?

16 MR. GUMBART: I can't say for sure that
17 they would on Nature Conservancy property. These species
18 rely on factors such as available sunlight and nutrients
19 in the soil. And so adjacent land use can have an
20 impact, but I cannot on the record state that that would
21 be the case.

22 MR. MERCIER: Are these four species that
23 are listed on the Natural Diversity Database are they
24 strictly marsh species?

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. GUMBART: No. there are -- two of
2 them that are listed, including the Spreading Globeflower
3 and Purple Crest, are more typically associated with
4 wetlands and would not be expected to be found higher up
5 on, you know, higher ridges.

6 The Golden-Winged Warbler is a species
7 that benefits from early successional habitat. That is
8 oftentimes in a wetland area where the predominant
9 vegetation growth is shrub layer, but it is also capable
10 of thriving in uplands so long as that early successional
11 habitat is present.

12 And the Sharp-Lobed Hepatica, a State
13 species of special concern, requires fairly rich soils as
14 may be found on calcareous bedrock. And calcareous in
15 this case is the limestone bedrock, fairly unique to the
16 northwest of the state.

17 MR. MERCIER: So would that particular
18 plant -- where would that be on the property -- on your
19 particular property?

20 MR. GUMBART: Higher up on the elevations
21 with fairly -- I won't say deep soils, but in this case
22 rich soils.

23 MR. MERCIER: So within a wooded slope --

24 MR. GUMBART: Yes --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. MERCIER: -- or more of an open area
2 or --

3 MR. GUMBART: In this case a wooded area
4 with a fair amount of canopy. And there's differences in
5 forest cover. In this case, I think we can generically
6 say the woods.

7 MR. MERCIER: Thank you. Mr. Cooper --

8 MR. COOPER: Yes --

9 MR. MERCIER: -- based on the review of
10 AT&T's coverage information that you have -- did -- did
11 you see their drive test data?

12 MR. COOPER: Yes, I did.

13 MR. MERCIER: Do you believe that data is
14 accurate?

15 MR. COOPER: I think it's accurate as far
16 as drive tests go. A drive test is a snapshot of
17 conditions at the time it was taken, and it only gives
18 you information about the areas where the vehicle
19 actually traveled. So it's a useful tool to compare with
20 other information to try to validate what you see.

21 MR. MERCIER: Okay. Based on their drive
22 tests and the other information you reviewed, such as
23 their coverage maps, do you believe there's existing
24 coverage problems for AT&T in this area?

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. COOPER: Yes, I do.

2 MR. MERCIER: Okay. I have no other
3 questions. Thank you.

4 CHAIRMAN STEIN: Senator Murphy.

5 MR. MURPHY: No questions, Mr. Chairman.

6 CHAIRMAN STEIN: Mr. Ashton.

7 MR. ASHTON: A few --

8 AUDIO TECHNICIAN: Microphone.

9 MR. ASHTON: Mr. Gumbart, just so I'm
10 clear, I'm looking at Map C-0 -- Sheet C-01 in the -- in
11 Exhibit 3, and it shows the property ownership at the top
12 of the mountain here. Is the -- the Nature Conservancy's
13 only property is on the east side of this area?

14 MR. GUMBART: That is the one that is in
15 proximity, yes. There are other holdings of the Nature
16 Conservancy in the Falls Village area.

17 MR. ASHTON: Yeah, I understand that, but
18 what is relevant to me is that your property here in
19 question is just to the east of this --

20 MR. GUMBART: That's correct.

21 MR. ASHTON: And would you agree that by
22 measurement, eyeballing from the map, it's about 700 feet
23 away from the proposed cell tower site?

24 MR. GUMBART: It was my familiarity with

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 the property boundaries that we had one corner that was
2 abutting. I have not --

3 MR. ASHTON: Right, the property abuts --

4 MR. GUMBART: Right --

5 MR. ASHTON: -- one corner. But is that
6 corner -- is it -- would you agree that that corner is
7 about 700 feet from the cell tower site?

8 MR. GUMBART: I would concur with that.

9 MR. ASHTON: I'm -- I'm sorry?

10 MR. GUMBART: Yes, sir --

11 MR. ASHTON: I've got a terrible cold and
12 I'm half deaf.

13 MR. GUMBART: I would agree that that is
14 the case.

15 MR. ASHTON: Okay. Okay. Now my next
16 question is how would some activity like a cell site,
17 which after construction is pretty quiet and passive,
18 have an adverse effect on the four species you've
19 mentioned, particularly the three that are not likely to
20 be found on the top of this?

21 MR. GUMBART: Well as I had indicated in
22 my earlier response, I cannot verify one way or another
23 as to whether the activity relative to the proposed cell
24 tower would have an adverse effect on those specific

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 plants.

2 MR. ASHTON: So is it fair to say we just
3 don't know then? Is that the proper answer?

4 MR. GUMBART: I think that's the proper
5 answer as it relates to species that are known on the
6 Nature Conservancy Preserve.

7 MR. ASHTON: Okay. But usually a passive
8 event -- a passive structure is not likely to upset
9 anybody so long as it's not on top of the species. Is
10 that fair to say?

11 MR. GUMBART: That is fair to say. If I
12 may make a statement relative to the question and that
13 carries relevance with the letters that have been
14 submitted both with the initial docket application and
15 this current one, is that the Nature Conservancy's
16 concerns lie less with the species on our own property
17 that are known and with an interest in ensuring that a
18 proper biological inventory take place on the site where
19 the tower is proposed.

20 MR. ASHTON: And I guess -- Mr. Cooper, I
21 think you're the one I want to ask -- and that relates to
22 the question that Mr. Mercier just asked -- the drive
23 test that was held by -- or made by holding a phone
24 outside of the window, is that standard protocol to

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 determine in-vehicle coverage?

2 MR. COOPER: No. That test was done by
3 citizens --

4 MR. ASHTON: You're going to have to bear
5 with me, I can't --

6 MR. COOPER: First of all --

7 MR. ASHTON: -- I went to Greece and I
8 just got back with a famous Greek cold, and it's a
9 humdinger.

10 MR. COOPER: First of all, I was not
11 personally involved in that test. It was performed by
12 members of the IWCC. It was strictly anecdotal. It was
13 run in an amateur fashion simply to get a rough idea of
14 where coverage existed and where it did not. And it was
15 I believe done as one of several ways to try to determine
16 if the information submitted by AT&T and by myself
17 appeared to be reasonably accurate based on the results
18 on the ground.

19 MR. ASHTON: Is that your conclusion, that
20 the information submitted by AT&T is reasonable?

21 MR. COOPER: No, I don't think -- I think
22 it has some inaccuracies in it, particularly in their
23 propagation maps because their propagation maps don't
24 even agree with their drive test map in many cases.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. ASHTON: And --

2 MR. COOPER: In some cases the drive test

3 --

4 MR. ASHTON: And who -- I want to be sure
5 I understand. Whose drive test map?

6 MR. COOPER: AT&T's.

7 MR. ASHTON: Okay. So you're saying
8 there's an inconsistency with the AT&T map?

9 MR. COOPER: Yes.

10 MR. ASHTON: Thank you. Mr. Sinclair, I
11 want to ask you the same question I asked earlier. Do
12 your regulations prohibit an applicant from coming back
13 with the same proposal forever?

14 MR. SINCLAIR: Well the same proposal, I
15 believe our regulations would prohibit that.

16 MR. ASHTON: Prohibit it forever or for a
17 time?

18 MR. SINCLAIR: I don't -- I would expect
19 forever. If -- if the -- if a decision was made based
20 upon how the regulations were written and what they said,
21 unless those regulations in some way were changed, I
22 would guess it would have to be forever for a specific
23 request to the Inland Wetlands and Conservation
24 Commission.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. ASHTON: Okay. If an applicant makes
2 some changes, can he come back in with a similar
3 proposal?

4 MR. SINCLAIR: I believe yes.

5 MR. ASHTON: Okay. Nothing further.
6 Thank you, Mr. Chairman.

7 CHAIRMAN STEIN: Thank you. Dr. Bell.

8 DR. BELL: Thank you, Mr. Chairman. Mr.
9 Cooper, have -- have you read the recent submission of
10 AT&T regarding the public safety network in this area?

11 MR. COOPER: Yes, I have.

12 DR. BELL: And do you, yourself, have any
13 direct knowledge of the public safety network in this
14 area?

15 MR. COOPER: I don't have direct
16 knowledge. All I have is the propagation maps that were
17 submitted, which I have reviewed.

18 DR. BELL: And understanding that, do you
19 -- what is your reaction to the maps presented?

20 MR. COOPER: The maps that I received are
21 of very poor quality and they're very difficult to
22 interpret, but it appears to me that -- and there are
23 apparently two types of public safety services, those
24 provided by cell phones and those provided by their own

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 means. And the cell coverage seems to be better than the
2 public equipment coverage. And it also appeared to me,
3 again recognizing that the maps were of a very small
4 scale and difficult to read and poor resolution, that the
5 proposed settlement facility would not make a significant
6 difference in that public safety coverage.

7 DR. BELL: Have you ever talked to people
8 in Falls Village or in Canaan who are responsible for
9 Falls Village in the public safety department about
10 coverage?

11 MR. COOPER: I have not personally spoken
12 with them, no.

13 DR. BELL: Thank you. Just one more
14 question. About the coverage map that you offered of the
15 alternative site that was mentioned -- that's been
16 mentioned as a possibility, how high is the tower in that
17 -- in the map that you submitted?

18 COURT REPORTER: One moment please.

19 (pause - tape change)

20 MR. COOPER: Let me just confirm, but I
21 believe it's 120, but -- (pause) -- no, I'm sorry, 140.

22 DR. BELL: And have you looked at the map
23 that AT&T submitted of coverage from that same
24 alternative using your figures for the latitude and

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 longitude?

2 MR. COOPER: I have not seen any maps
3 submitted by AT&T for that site.

4 DR. BELL: Well -- okay. Thank you.
5 Those are my questions, Mr. Chair.

6 CHAIRMAN STEIN: Thank you. Mr. Hannon.

7 MR. HANNON: I do have a follow-up
8 question for Mr. Cooper. Can you go back and just
9 explain to me -- I wasn't quite sure what you were
10 referring to when you talked about the cell phone service
11 and then public service. So can you please provide more
12 detail on that? I'm just trying to make sure -- the
13 public service, the fire, police, 911 and things like
14 that, are at a much lower level -- or a lower level than
15 just standard cell phone service? I'm just trying to get
16 better clarification --

17 MR. COOPER: Well I don't recall making
18 any comments -- you're talking -- you're referring to
19 public safety I believe?

20 MR. HANNON: Yes.

21 MR. COOPER: In my testimony I didn't
22 cover anything on public safety. However, I did review
23 the three maps that were submitted recently of the public
24 safety coverage.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. HANNON: In your comments that you had
2 just previously made --

3 MR. COOPER: Oh, in these comments --

4 MR. HANNON: -- you had made a comment
5 about --

6 MR. COOPER: Oh, okay --

7 MR. HANNON: -- phone service and public
8 service being at a lower level. And I'm just trying to
9 understand specifically what it is you're referring to.

10 MR. COOPER: I think what I was trying to
11 say was that there is a certain amount of public safety
12 coverage provided both by cell phones and by public
13 safety agencies own equipment. And that from what I
14 could tell, again recognizing that the maps were very
15 difficult to interpret, that the proposed settlement site
16 if it were used for public safety and/or providing cell
17 service to public safety agencies, would not make a
18 significant difference in the coverage they have now.

19 MR. HANNON: Okay, thank you --

20 MR. COOPER: That's what I was trying to
21 say.

22 MR. HANNON: Okay. I have no further
23 questions.

24 CHAIRMAN STEIN: Mr. Wilensky.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. EDWARD S. WILENSKY: Yes. Mr.
2 Sinclair -- I'm sorry if this question has been asked
3 before I came in, and I apologize -- I'm sorry, but your
4 board or commission, the Inland Wetlands Board, would
5 this constitute a change in condition if submitted to
6 your board? The application as submitted here today, you
7 know, a few week ago or a month ago, is that -- are they
8 -- would they be considered changed conditions as far as
9 your board is concerned?

10 MR. SINCLAIR: Yes, we would consider on
11 the Inland Wetlands and Conservation Commission an
12 application that had changed conditions.

13 MR. WILENSKY: Are the conditions as
14 submitted on this application changed conditions as far
15 as your board is concerned?

16 MR. SINCLAIR: Generally no, there are not
17 changed conditions. The only changed condition is a
18 changed condition that was created by the Applicant
19 themselves, and that is by placing -- by placing a tower
20 site in a new position on Cobble Hill.

21 MR. WILENSKY: Well inasmuch as this is
22 submitted in a new position, isn't that a changed
23 condition? And I'm just asking the question and I'm not
24 making a statement.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. SINCLAIR: Yes. But it would require
2 -- yes, it is a changed condition. It's also a new
3 condition and it will require an application, which has
4 not been received.

5 MR. WILENSKY: Okay, thank you -- thank
6 you, Mr. Sinclair. Thank you, Mr. Chairman.

7 CHAIRMAN STEIN: Thank you. Just a
8 question or two. I'm trying to get a sense of the
9 magnitude of concern. The access-way relative to the
10 actual tower, and it may be different -- can some of your
11 witnesses give me a sense of the level of concern of the
12 access-way and what impacts that would have versus the
13 actual tower itself? And whoever -- you -- you're the
14 leader of your group --

15 MR. SINCLAIR: Yes, Mr. Chairman --

16 CHAIRMAN STEIN: -- you can dunk it or you
17 can assign it --

18 MR. SINCLAIR: I would like to ask Richard
19 Calkins to field that question and also Mr. Greg Marlowe
20 please.

21 MR. CALKINS: I'll go first. I'm not sure
22 I understood what your question was.

23 CHAIRMAN STEIN: Maybe that's why he asked
24 you to answer it -- (laughter) -- I'm -- I'm trying to

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 get a sense of the magnitude of concern, and it doesn't
2 have to be this is highest and this is lowest, but the
3 access-way, I understand from what I've read, that that's
4 of some concern as to the impact that that might have on
5 -- and I'm starting to answer my own question, so I don't
6 want to do that -- and I also want to know whether the
7 actual -- how concerning the actual tower itself is and
8 what impacts that might have? So I'm just --

9 MR. CALKINS: Well first of all, I can
10 address some of the issues regarding the access-way. In
11 the new application -- from what I reviewed of the new
12 application that AT&T put in, the access-way has actually
13 gotten steeper than it was before. And it seemed
14 excessively steep before. I'm not sure how -- in my
15 opinion, I'm not sure how an emergency vehicle could
16 possibly get up there. I'm not sure how they can get
17 construction equipment up there. I'm not sure how they
18 can get refueling equipment up there either for the
19 generator or during construction without using very large
20 track machines to pull them up there. And -- which is
21 going to tear up the road pretty good.

22 Also -- and as far as the construction of
23 the access-way is concerned too, the road is now somewhat
24 close to a mile long or very close to a mile long and any

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 materials that are delivered would have to back up that
2 hill. There's no place for a truck to turn around up
3 there. So they would have to back up the hill all the
4 way, and it would be my opinion that they wouldn't be
5 able to -- they would have to be towed. Mr. Marlowe may
6 be able to address that somewhat better, he -- as far as
7 the heavy equipment is concerned. But grades of this
8 magnitude, especially with a gravel surface, tend to be
9 very difficult to gain traction on them.

10 CHAIRMAN STEIN: Does Mr. Marlowe care to
11 comment?

12 MR. MARLOWE: Yes, thank you, sir. Mr.
13 Calkins is pretty succinct with my opinion, and that is
14 with, you know, slopes approaching 30 percent, to get
15 heavy equipment up there to build the road, to build the
16 tower, in essence the -- (mic feedback) -- the trucks to
17 deliver, as he spoke to, the road building material and
18 also the concrete to put the tower up as well -- and I am
19 the manager of a ready-mix concrete and we've done many
20 towers, and this is, in my opinion, the worse access to a
21 proposed tower site that I've seen, and I would not feel
22 comfortable with my machines going up that. They indeed
23 would need to be towed by a very large sized bulldozer,
24 and in essence is what they would typically use. These

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 are all-wheel drive machines, built specifically for off-
2 road purposes, and they would not, in my opinion, be able
3 to make that access unpaved under their own power. So
4 it's also, therefore, my belief that no emergency
5 equipment would get up that without the assistance of
6 those machines.

7 CHAIRMAN STEIN: And that is the same
8 issue as with the original proposal and this changed one,
9 is that correct?

10 MR. MARLOWE: Yes, sir.

11 CHAIRMAN STEIN: Just so I understand, Mr.
12 Cooper, in what you submitted you're suggesting that
13 there would be other -- either an alternative site or
14 sites that would better provide the coverage?

15 MR. COOPER: Well based on my review of
16 what was presented, it seems to me that the Applicant did
17 not do an exhaustive search, that there are likely other
18 sites with both willing property owners and good coverage
19 prospects. I wasn't proposing that particular site. I
20 have very little information about it. I just picked it
21 as a test to see if other sites could possibly work
22 better with fewer environmental consequences, and I
23 presented that as an example of one that probably could.

24 CHAIRMAN STEIN: Based on that, I guess

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 then -- maybe this is for Mr. Sinclair -- has the town
2 proposed alternative sites with willing property owners?

3 MR. SINCLAIR: No, Mr. Chairman, the town
4 has not. As Mr. Cooper as expressed, we knew going back
5 many, many years, that there was a little piece of town
6 property down there, and so we just sort of wondered,
7 again as we had wondered years ago, and I believe it went
8 all the way back to 1995, as to whether this piece of
9 property had any suitability.

10 While I'm on the phone here, I would like
11 to make a correction if I might to Mr. Calkins. He -- he
12 referred to a new application. And I don't think he is
13 aware of the fact, and I did not make him aware of the
14 fact, that there has indeed been no new application. And
15 he did refer to a new application. Thank you very much.

16 CHAIRMAN STEIN: Okay, thank you very
17 much. That's I guess the last question from -- oh -- Mr.
18 Ashton.

19 MR. ASHTON: In my deafness I missed a
20 point. Mr. Cooper, you're saying that the site you
21 picked is just a random site, that's not one that is
22 necessarily available or anything like that, but just you
23 picked it to show something else could work?

24 MR. COOPER: Well, I -- first of all, I

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 picked it because it was either on or near the town owned
2 site that Mr. Sinclair referred to and that appeared to
3 be a site that would have fewer environmental
4 consequences and might be able to provide coverage. I
5 didn't contact the owners.

6 MR. ASHTON: So we have no idea whether
7 the owners are willing to consider a cell tower on their
8 property, is that fair to say?

9 MR. COOPER: I -- if I can defer to Mr.
10 Sinclair? I did not speak to the owners, but --

11 MR. ASHTON: Well I'm trying to find out
12 what your role in this was. Did you pick the site?

13 MR. COOPER: No.

14 MR. ASHTON: Who selected the site to your
15 knowledge?

16 MR. COOPER: IWCC gave me a general idea
17 of a site to look at, and that was -- that was one.

18 MR. ASHTON: Mr. Sinclair did, I'm sorry?

19 MR. COOPER: Yes.

20 MS. KELSEY: And I did. Susan Kelsey.

21 MR. ASHTON: Okay. So you did?

22 MS. KELSEY: Yeah.

23 MR. ASHTON: Do we know whether the site
24 is available?

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. KELSEY: No, we do not. We did not
2 believe that that was our mission in this whole thing.
3 We felt that during the original 409 docket that was
4 where alternative sites were discussed and apparently
5 exhausted. So our primary mission at this point was just
6 to some how -- because AT&T numerous times in their --
7 I'm going to call it the lawsuit -- kept using the term
8 over and over again that -- that the Inland Wetlands
9 Commission -- the Conservation Commission never refuted
10 any of their maps. And indeed that was true because we
11 are not RF engineers and we did not have any available to
12 us. So we feel at this point, especially considering it
13 was not a new application, that all we at this point had
14 time to do considering the time constraints on this, was
15 to at the bare minimum see if all their previous
16 propagation maps were indeed valid. And so we only had a
17 few days to just contact Walter and say Walter, you know,
18 we are aware that there's this town parcel down on the
19 Hollenbeck, which is apparently in the area where there's
20 this supposed need, so we said can you just try a
21 propagation map with a tower there. And that's as far as
22 it went.

23 MR. ASHTON: Okay. Well wouldn't you
24 agree though that --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. KELSEY: What?

2 MR. ASHTON: Wouldn't you agree with me
3 that using that logic, there are many, many sites in
4 Falls Village that could work, but they're not
5 necessarily available?

6 MS. KELSEY: No, I don't know that. I --
7 I can't say that there are many sites that would work.

8 MR. ASHTON: Well the state park is not
9 going to be available, is it?

10 MS. KELSEY: So then that wouldn't work.

11 MR. ASHTON: I'm sorry?

12 MS. KELSEY: That wouldn't work then in my
13 opinion.

14 MR. ASHTON: Well topographically it may
15 be perfectly fine, but if the State refuses access to it,
16 that's an invalid site --

17 MS. KELSEY: Uh-huh --

18 MR. ASHTON: -- wouldn't you agree?

19 MS. KELSEY: This is true.

20 MR. ASHTON: So we -- my point is we don't
21 know whether there's any validity to the site that has
22 been suggested here whatsoever. Isn't that fair to say?

23 MS. KELSEY: I'm being put in a very
24 awkward position because -- but since I've been --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. ASHTON: Well we're in an awkward
2 position too, we've got to make a --

3 MS. KELSEY: I have been sworn to tell the
4 truth, and so therefore I will. I did contact abutting
5 property owners on a very -- on a very casual basis and
6 asked them if they would -- and I couldn't give them any
7 specifics because I didn't have any particular location
8 or anything, but should this be a viable possible site
9 for coverage, you know, would you consider it. And they
10 responded yes. But they would want control over it and
11 that he was in no position to say it was a go-ahead.

12 MR. ASHTON: But --

13 MS. KELSEY: So that's where --

14 MR. ASHTON: -- you didn't contact the
15 property owner however?

16 MS. KELSEY: Excuse me?

17 MR. ASHTON: Did you or did you not
18 contact --

19 MS. KELSEY: Yes --

20 MR. ASHTON: Yes --

21 MS. KELSEY: -- yes, that's what I said.

22 MR. ASHTON: Oh, okay --

23 MS. KELSEY: Yes --

24 MR. ASHTON: -- I'm sorry --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. KELSEY: -- yes, I did. I did.

2 MR. ASHTON: Thank you.

3 MS. KELSEY: Not -- not the property owner
4 i.e. the town one-acre parcel, but that property is
5 surrounded by other properties.

6 CHAIRMAN STEIN: Okay, we have -- Mr.
7 Hannon.

8 MR. HANNON: I have a question for --

9 AUDIO TECHNICIAN: Microphone, Mr. Hannon
10 --

11 COURT REPORTER: Your microphone please.

12 MR. HANNON: A question for Mr. Marlowe.
13 Can you give me some specifics -- I mean you gave some in
14 dealing with heavy equipment, but can you give me an idea
15 like the width of some of the vehicles that would be used
16 for this type of construction?

17 MR. MARLOWE: Sure. Well anything that of
18 course has to travel down the highway is typically going
19 to be eight-foot in width for the main piece of machinery
20 with additional for the mirrors.

21 MR. HANNON: Okay, so the -- the wheel
22 base is basically eight feet maximum --

23 MR. MARLOWE: That's correct --

24 MR. HANNON: -- and that's for all

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 vehicles?

2 MR. MARLOWE: That's correct.

3 MR. HANNON: Okay, thank you.

4 MR. MARLOWE: Eight-foot to eight-foot-
5 six.

6 MR. HANNON: Okay, thank you.

7 CHAIRMAN STEIN: Mr. Mercier.

8 MR. MERCIER: Mr. Marlowe, as a follow-up,
9 I believe you said you worked on some tower projects, is
10 that correct?

11 MR. MARLOWE: A lot of -- we deliver a lot
12 of material to cell towers and ski mountains.

13 MR. MERCIER: Okay and -- delivering
14 concrete?

15 MR. MARLOWE: That's correct.

16 MR. MERCIER: What's the steepest grade
17 your trucks can go up at these sites without assist
18 vehicles?

19 MR. MARLOWE: Unassisted, unpaved, it --
20 that's a tough question. I'll give you a general sense
21 of -- my belief is 15 to 20 percent is -- and 20 percent
22 being of course at the top of the threshold by far.

23 MR. MERCIER: And so when you say assist
24 vehicles are you actually talking about --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. MARLOWE: Typically they would use a
2 bulldozer, a track bulldozer to cable a one hundred
3 percent connection between the two machines.

4 MR. MERCIER: And up to what grade could
5 those handle?

6 MR. MARLOWE: I don't -- I don't know that
7 I've done 30 percent -- I don't believe I have. If -- if
8 I have done 30 percent and excess, it was for a very
9 unique site. Perhaps a ski mountain would be an example
10 I have in my mind.

11 MR. MERCIER: Do you recall the steepest
12 grade you've delivered materials to a tower site?

13 MR. MARLOWE: I would think 20 percent
14 would probably be about the top. Unmeasured, but by my
15 feeling.

16 MR. MERCIER: Okay, thank you. Mr.
17 Calkins, I think you mentioned -- you said some vehicles
18 would have to back up the driveway. Can you elaborate on
19 what -- what that statement was about?

20 MR. CALKINS: Yes. With a -- with a
21 driveway -- with a narrow driveway like this, there's no
22 place for any vehicle to turn around. So as they're
23 constructing the road, any tri-axels or any kind of dump
24 truck that they brought material there to would have to

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 back up the road in order to dump and be able to get out
2 without driving over the pile. So there's -- there's no
3 place up there for them to turn around. There's -- it's
4 very narrow and on a steep grade. They would have to
5 start at Barnes Road and back all the way up.

6 MR. MERCIER: Okay. Are you aware there's
7 a plateau up there where there's a cabin?

8 MR. CALKINS: Yes, but I don't think
9 that's large enough to turn around a tri-axel.

10 MR. MERCIER: Have you seen that area?

11 MR. CALKINS: Well you actually have to
12 build it first before you could get to it to turn around
13 --

14 MR. MERCIER: I understand --

15 MR. CALKINS: -- so I -- I have not seen
16 it, but, you know, generally you're talking a large
17 radius to swing one of those dump trucks around. And
18 then they'd have to spread the material before it could
19 come back down.

20 MR. MERCIER: Okay, thank you.

21 MR. CHILDS: Yeah, if I -- if I --
22 Starling Childs -- if I could just add to that? I mean I
23 think exactly what Mr. Calkins is saying -- because we
24 build logging roads in the forestry business and -- and

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 you can only back in for a long period as you're building
2 the road. You can certainly put a turn-around on the top
3 once you get there. But in order to get there and stay
4 within the 30-foot right-of-way, every truck delivering
5 any material or extracting any material will have to back
6 up. And -- and there again, as soon as you get to
7 backing equipment in, you're -- your whole traction
8 process changes. You really start spinning your wheels
9 backing in.

10 And so that -- that's why -- that's why
11 zoning ordinances require nothing in excess of 12
12 percent, which requires a lot of switch-backing. If
13 someone really wanted to build something on top of this
14 hill legally and legitimately, they would have to build a
15 switch-back road like you see in Europe or anywhere else
16 with a challenging grade like this. I -- I put, you
17 know, just a basic -- not an altimeter, but a clinometer
18 on that slope where the centerline of the road is, and
19 it's 36 percent. And that's where the road is going
20 straight up the grade. Now they can cut that into the
21 face of the hill, but they can't -- for a stretch of that
22 road it's even in excess of 30 percent, which was in the
23 last proceedings.

24 And there was no mention made of the fact

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 that they've -- in order to stay in the right-of-way,
2 which I identified, they've now gone from a trapezoidal,
3 which is always bad for runoff and conducting water -- I
4 mean that's another thing, the steepness of this road and
5 the drainage features on either side, they've actually
6 reduced the capacity of those drainage ditches by going
7 from trapezoidal to V-shape, which increases the speed of
8 the dissent of whatever water is coming down there. And
9 if you look at the plans, there's very little place where
10 they're actually turning that water out. It's all coming
11 straight down the hill or straight down alongside the
12 road. They don't have any culverts, they don't have any
13 discharge, they don't have any -- you know, it all comes
14 down and shoots right out through a culvert at the base
15 under the town road, Barnes Road, and it's going to be
16 like, you know, a flue -- a flume going out into that
17 wetland area that's own by the State at the bottom.

18 So just -- that's one consideration in
19 what will happen to those ditches because they are so
20 tight. And in the wintertime they'll turn into little
21 mini glaciers. And then eventually you'll get surface
22 flow on the road, you can't avoid it. Those -- those
23 ditches will freeze up because that's -- in wintertime
24 water is trying to be constrained in those tight little

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 ditches and has no turnout, and it will just build up
2 over itself and overwhelm the rest of the topography.
3 It's -- it's a -- from a drainage standpoint, not even
4 the construction vehicles, not even the access vehicles,
5 or even the emergency vehicles, which will never get up
6 there, just the drainage in those ditches, regardless of
7 whether they put this textile material with seeding and
8 everything else that they propose, that they haven't --
9 they admit themselves have never used in an application
10 like this -- you know, frankly, I don't -- I don't of any
11 vegetation that will hold up to the rate at which the
12 water will come off that basically rock top hill, which
13 has no -- no infiltration, no storage capacity. So it's
14 a fascinating proposal really in every stretch of the
15 imagination to build a road up there, but so be it.

16 MR. MERCIER: Thank you. Regarding the --
17 this hypothetical site, isn't the hypothetical site on
18 town property, the one that was modeled?

19 MR. COOPER: We started with the town
20 property. And the description in my testimony is that
21 it's either on the town property or the surrounding
22 lands. And it's more likely on the surrounding lands.
23 One reason for that is that the town property maps seem
24 to be pretty inaccurate, and we were not really able to

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 determine where the town property stopped and the other
2 property began. So it's near the -- you could say it's
3 on or near the town property.

4 MR. MERCIER: If it was on town property,
5 would it be offered to AT&T for use?

6 MR. COOPER: If it were --

7 MR. MERCIER: Yes, if it was on town
8 property, would it be offered to AT&T for tower use?

9 MR. COOPER: I can't answer that.

10 MS. KELSEY: At this point -- at this
11 point, I don't think we could really speak for the town
12 selectmen and possibly an all-town meeting for a vote for
13 it. I don't know -- I don't know. I can't --

14 MR. MERCIER: Okay, thank you.

15 MR. SINCLAIR: I expect the second
16 smallest town in Connecticut would really appreciate the
17 revenue however.

18 MR. MERCIER: Thank you. No further
19 questions.

20 CHAIRMAN STEIN: Okay, we'll now go to
21 cross-examination by the Applicant.

22 MR. CHRISTOPHER B. FISHER: Thank you,
23 Chairman. We do have some questions.

24 I'm going to start with Mr. Sinclair --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 I've got to speak up just a little bit -- I understand
2 your commission is a joint commission, both a wetlands
3 commission and a conservation commission. Is that true?

4 MR. SINCLAIR: That is true.

5 MR. FISHER: And you're the chairman of
6 the joint commission?

7 MR. SINCLAIR: Yes, I am.

8 MR. FISHER: I'd like to start with some
9 questions that relate to wetlands and then we'll go into
10 some other aspects of your testimony and submissions to
11 the Council, okay --

12 MR. SINCLAIR: I'll do my best.

13 MR. FISHER: Okay. From the outset your
14 commission claimed an interest in regulating this project
15 through your own wetlands regulations, is that accurate
16 to say?

17 MR. SINCLAIR: We are required by state
18 statute to regulate any impact upon wetlands. So that is
19 indeed our interest.

20 MR. FISHER: Would that be true if state
21 statute overrided your jurisdiction?

22 MR. SINCLAIR: If a state statute
23 overrided our jurisdiction, then we would still have an
24 interest, but -- I'm not exactly sure how to answer that

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 question. Can you help me, Sue?

2 MR. FISHER: That's okay, we can focus on
3 your interest then. Have you had a chance to review the
4 April 22, 2013 report that was prepared by Mr. Gustafson
5 of All Points Technology related to wetlands?

6 MR. SINCLAIR: Yes, I believe I have. And
7 I don't have it in my memory. I have it in one of my
8 bags, but --

9 MR. FISHER: And that was submitted in
10 response to the Inland Wetlands Commission's
11 interrogatories --

12 MR. SINCLAIR: Okay, yes.

13 MR. FISHER: It's behind Tab 3.

14 MR. SINCLAIR: Yeah. I think that's it --

15 MS. KELSEY: Right here.

16 MR. SINCLAIR: Yes, I have that.

17 MR. FISHER: So you had a chance to read
18 that. Did you -- did you read Mr. Gustafson's conclusion
19 that there are no wetlands or watercourses located within
20 about 200 feet of the entire project area? Did you read
21 that conclusion?

22 MR. SINCLAIR: Yes, I did read that
23 conclusion.

24 MR. FISHER: Okay --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. SINCLAIR: I'm not entirely sure that
2 I agree with it, but --

3 MR. FISHER: What basis do you have to
4 disagree with it?

5 MR. SINCLAIR: Well there are seeps and
6 springs on that hillside. I do not know where they are
7 identified particularly, but I know of one or two that
8 are on that hillside in the proximity of the activity on
9 Cobble Hill.

10 MR. FISHER: Do -- do you have any reason
11 to doubt Mr. Gustafson, who's a professional soil
12 scientist, in his evaluation which was submitted?

13 MR. SINCLAIR: Yes, I do.

14 MR. FISHER: So you don't believe he
15 actually investigated the areas he said he investigated
16 for wetlands?

17 MR. SINCLAIR: I don't know whether he did
18 or not.

19 MR. FISHER: Do you have any reason to not
20 believe his credibility as a witness?

21 MR. SINCLAIR: There was a question asked
22 of him with regard to amphibians --

23 MR. FISHER: I'm asking about wetlands.

24 MR. SINCLAIR: Well wetlands involve

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 amphibians. And his answer to that indicated to us that
2 there was at least on paper not an understanding of the
3 relationship of wetlands to uplands with regard to
4 certain vertebrae, such as salamanders. So --

5 MR. FISHER: Do you have a professional -

6 -

7 MR. SINCLAIR: So if he was -- if he
8 answered our question in such a way as to bring into
9 question his full understanding of that, then my answer
10 to your question is I'm not entirely convinced of his
11 credibility.

12 MR. FISHER: So -- so maybe you'll have a
13 chance to ask him some questions later then.

14 MR. SINCLAIR: Yes, I will.

15 MR. FISHER: Okay, very good. Do you have
16 a professional soil scientist on your panel that you're
17 presenting or a wetlands report that you're presenting to
18 the Council?

19 MR. SINCLAIR: A professional soil
20 scientist on the commission? No. We consult a soil
21 scientist.

22 MR. FISHER: Okay. And the soil scientist
23 you've consulted, they've not prepared any report or
24 submitted that to the Siting Council, have they?

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. SINCLAIR: No. Shawn has not.

2 MR. FISHER: Okay. Let's assume for the
3 moment that Mr. Gustafson is right that there's no
4 wetlands or watercourses within 200 feet of the entire
5 project area proposed here, if that's true, even if your
6 council had jurisdiction as a wetlands body, would they
7 need a permit locally if that was true?

8 MR. SINCLAIR: Yes.

9 MR. FISHER: What kind of permit would
10 they need?

11 MR. SINCLAIR: They would need a permit
12 for the activity that they were proposing in proximity to
13 a wetland that might have potential impact on a wetland.
14 And it would be their -- isn't that correct, Susan --
15 and it would be their responsibility to establish what
16 that impact might be and how they might mitigate that
17 impact.

18 MR. FISHER: My question assumes there's
19 no wetlands within 200 feet of any activity --

20 MS. KELSEY: Could I speak to this? Can I
21 help him? Susan Kelsey, Secretary of the Wetlands
22 Commission.

23 What we would do in this situation --
24 assuming this project came before us as a wetlands

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 commission, you know, it has nothing to do with the state
2 or anything, they were just coming to us, we would know
3 where the wetlands were in the watershed, and we would
4 make a preliminary determination as to whether or not we
5 felt that any of their activities, regardless of their
6 distance from a wetlands, even if it's more than 200
7 feet, it could be 2,000 feet away, we would probably --
8 in all probability ask them to submit an application so
9 that we could be assured that all their activities would
10 result in no negative impact to the wetlands, especially
11 if it's a wetlands within the watershed.

12 MR. FISHER: So -- so despite whatever
13 your local regulations say, you believe that as a
14 wetlands commission, you're entitled to review areas that
15 are --

16 MS. KELSEY: That is --

17 MR. FISHER: -- public areas --

18 MS. KELSEY: -- that is now a state
19 regulation that supersedes our outdated regulations.
20 That is a state regulation that gives us that authority.

21 MR. FISHER: Isn't there --

22 MS. KELSEY: We are not -- we are not
23 making -- we are required by state statute to review
24 upland activities that could have any possible impacts on

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 a wetland.

2 MR. FISHER: It goes somewhat beyond the
3 scope, but are you --

4 CHAIRMAN STEIN: Excuse me. One of our
5 Council members --

6 MR. DANIEL P. LYNCH, JR.: Mr. Fisher, if
7 I may?

8 MR. FISHER: Certainly.

9 MR. LYNCH: Mr. Sinclair, did I understand
10 you correctly to say that you had an independent soil
11 sample study done?

12 MR. SINCLAIR: We did not.

13 MR. LYNCH: Oh, okay. Then I
14 misunderstood. Sorry.

15 MR. SINCLAIR: I'm sorry if I misled you
16 in some way.

17 MR. FISHER: So I just want to clarify, so
18 -- it goes somewhat beyond I think the scope of the
19 proceedings, but -- so you may not be aware of some of
20 the case law that regulates in addition to legislation a
21 local wetlands commission and how far you can go beyond a
22 wetlands area to regulate. Is that safe to say?

23 MS. KELSEY: Could you repeat that?

24 MR. FISHER: You seem to be saying that in

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 the entire Town of Falls Village, which would -- if it's
2 not actually delineated as a wetland, quite possibly
3 considered by you as upland area, and you have the
4 authority to regulate activity in those areas and
5 actually require a permit review?

6 MS. KELSEY: No -- you mean just
7 arbitrarily?

8 MR. FISHER: That's what I'm asking.

9 MS. KELSEY: Of course not.

10 MR. FISHER: So you have to be guided by
11 your regulations. And if you're not within an actual
12 wetland or watercourse, you wouldn't need a permit from
13 your agency?

14 MS. KELSEY: I think I just explained --

15 MR. FISHER: Is that true --

16 MS. KELSEY: -- where we're coming from.
17 No, I -- I guess we're on different waves here because --
18 all I can say is if we feel a proposed activity has the
19 potential of having a negative impact on a wetland, we
20 can regulate it.

21 MR. FISHER: I'm asking the distinction
22 between comment on it to other agencies and actually
23 regulated as the wetlands commission. But why don't we
24 just move on --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. KELSEY: Okay, thank you.

2 MR. FISHER: Did you review in Mr.
3 Gustafson's report that the nearest wetland is actually
4 across Barnes Road and in the rear yard of a residential
5 structure? Did you see that in his report?

6 MR. SINCLAIR: Yes.

7 MR. FISHER: Okay. Is it your position
8 that the activity that's proposed by AT&T will have a
9 direct impact on that particular wetland?

10 MR. SINCLAIR: It is possible.

11 MR. FISHER: It's possible -- anything is
12 possible. Is it your position that it would have a
13 direct impact?

14 MR. SINCLAIR: It's possible, yes.

15 MR. FISHER: As far as the existing road
16 is concerned, has the wetland commission or any other
17 agencies to your knowledge issued any violations
18 regarding the condition of the road?

19 MR. SINCLAIR: A violation to the
20 condition of the road?

21 MR. FISHER: Any runoff --

22 MR. SINCLAIR: There's no violation with
23 regard to the condition of the road.

24 MR. FISHER: Okay, thank you. Alright,

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 let's move on to your role as the Conservation
2 Commission, I do have a few questions as well. I noted
3 in your recent 2013 Plan of Conservation and Development
4 update that 55 percent of the entire community is
5 actually conserved as open space. Is that accurate?

6 MR. SINCLAIR: I believe so.

7 MR. FISHER: Okay. I'd just like to --
8 I'm going to hand out -- I have three copies -- they're
9 quite large, but I'm going to hand one to the witness if
10 I can of that actual document.

11 (pause)

12 MR. FISHER: I'm going to ask that the
13 Council just take administrative notice of the recent
14 2013 town conservation plan of development update.

15 Mr. Sinclair, I just handed you a
16 document. Is this, to your knowledge, the actual final
17 version that was adopted by --

18 MR. SINCLAIR: To my knowledge, this is
19 the final version, but I don't believe that it's been
20 approved yet by the town in a town meeting. Is that
21 correct? Okay.

22 MR. FISHER: I'm going to refer simply to
23 Appendix D, if I could --

24 MR. SINCLAIR: Beg pardon?

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. FISHER: Appendix D.

2 MR. SINCLAIR: D.

3 MR. FISHER: It's in the back, it's about
4 three pages from the end.

5 MR. SINCLAIR: B as in beta?

6 MR. FISHER: D, sorry, as in dog.

7 MR. SINCLAIR: D, I beg your pardon. I
8 guess that my hearing isn't all that it should be. Thank
9 you, I have it.

10 MR. FISHER: Appendix D is titled
11 Conservation Resources Map?

12 MR. SINCLAIR: Yes.

13 MR. FISHER: Okay. The -- the areas shown
14 in green, those are noted as existing preserved open
15 space, is that correct?

16 MR. SINCLAIR: Yes.

17 MR. FISHER: And that -- those land masses
18 are the 55 percent that are currently conserved and
19 dedicated open space, is that accurate?

20 MR. SINCLAIR: I suspect so.

21 MR. FISHER: Okay.

22 MR. SINCLAIR: I've not analyzed this
23 document.

24 MR. FISHER: You -- you did assist in your

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 role on the commission in preparation of this document?

2 MR. SINCLAIR: We filled out an
3 application and a questionnaire --

4 MS. KELSEY: Not --

5 MR. SINCLAIR: What?

6 MS. KELSEY: Not an application --

7 MR. SINCLAIR: No, I -- we filled out a
8 questionnaire -- thank you -- we filled out a
9 questionnaire with regard to this, but it was not a joint
10 project of the Planning and Zoning Commission and the
11 Conservation Commission despite the title.

12 MR. FISHER: But you had an opportunity to
13 comment on it?

14 MR. SINCLAIR: Yes.

15 MR. FISHER: Okay, very good.

16 MR. SINCLAIR: And we did comment
17 extensively.

18 MR. FISHER: Okay. With respect to the
19 area that AT&T is proposing on Cobble Hill, is that shown
20 in green on the map or is that shown in white?

21 MS. KELSEY: Both --

22 MR. SINCLAIR: At this scale, it's a
23 little difficult for me to see, but -- let's see -- where
24 does Barnes Road come into -- the scale is so small, I

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 cannot with any accuracy confirm your question -- let me
2 see, that's --

3 MR. FISHER: But to your knowledge, Cobble
4 Hill and the underlying property is not currently open
5 space, correct?

6 CHAIRMAN STEIN: Attorney Fisher --

7 MR. SINCLAIR: Yeah, but --

8 CHAIRMAN STEIN: -- this is really very
9 difficult --

10 MR. SINCLAIR: -- no, it's not --

11 CHAIRMAN STEIN: -- the Council doesn't
12 have this information. And you're having this
13 interesting conversation, but we don't have this map in
14 front of us and it just makes it difficult for us to
15 digest what you're --

16 MR. FISHER: I'm just establishing a
17 foundation for a further question. I can move on.

18 CHAIRMAN STEIN: Okay.

19 MR. FISHER: Has -- has the Conservation
20 Commission ever approached the owners of Cobble Hill to
21 acquire that parcel as open space?

22 MR. SINCLAIR: No.

23 MR. FISHER: No? Okay. Thank you.

24 Alright. Mr. Sinclair, I do have another document --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 which Mr. Chairman, I do have copies for everyone that
2 I'm going to hand out here.

3 (pause)

4 MR. FISHER: Chairman, I'm handing you
5 what I'd like to have the Council take administrative
6 notice of, they're minutes of your Inland Wetlands and
7 Conservation Commission meeting from November 16, 2009,
8 December 8, 2009, December 22, 2009, February 19, 2013,
9 and April 7, 2013. To our knowledge are these minutes
10 that you normally keep in the due course of business with
11 respect to the Conservation Commission?

12 MR. SINCLAIR: Yes.

13 MR. FISHER: And these meetings are
14 available on the internet where I sourced them, is that
15 correct?

16 MS. KELSEY: The minutes?

17 MR. FISHER: Yes.

18 MS. KELSEY: Yes.

19 MR. SINCLAIR: Yes.

20 MR. FISHER: Okay.

21 MS. KELSEY: Well I don't know if the
22 first three are --

23 MR. SINCLAIR: I doubt that the first
24 three are, but -- did you access them?

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. FISHER: I did.

2 MR. SINCLAIR: Okay.

3 MS. KELSEY: Back in 2009? All of them --
4 oh, okay -- alright, well you did then.

5 MR. FISHER: So I just wanted to go
6 through a couple of questions on the timeline of events.
7 So back in 2009 in your November meeting you noted the
8 receipt -- the town's receipt of the technical report
9 filed by AT&T, is that correct?

10 MR. SINCLAIR: Yes.

11 MR. FISHER: Okay. And then I noted at
12 your December 8th meeting, you had a meeting where you
13 invited what appears to be Gabrielle Seymour and Blake
14 Lavin -- Levitt, excuse me -- to have a conversation
15 about the project, is that correct?

16 MR. SINCLAIR: I believe so, yes -- it
17 says that, yes.

18 MR. FISHER: Okay. And is -- Blake Levitt
19 and Gabrielle Seymour are they here now?

20 MR. SINCLAIR: Yes, they are.

21 MR. FISHER: Okay. And they're -- they're
22 advising your commission?

23 MR. SINCLAIR: Yes, they advise.

24 MR. FISHER: Okay. So let's - let's move

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 to the February meeting that you had earlier this year.

2 COURT REPORTER: One moment please.

3 (pause - tape change)

4 MR. FISHER: In reviewing those minutes
5 from February of this year, it appears that a motion was
6 made to authorize the commission, your commission to work
7 with counsel, is that correct?

8 MR. SINCLAIR: That is correct.

9 MR. FISHER: And in this particular set of
10 minutes, I noted that Gabrielle Seymour was present.
11 When you referred to counsel, is that Miss Seymour or the
12 town attorney?

13 MR. SINCLAIR: That's Miss Seymour.

14 MR. FISHER: Okay, so not the town
15 attorney?

16 MR. SINCLAIR: Correct.

17 MR. FISHER: Okay. So is Miss Seymour
18 representing the Conservation and Wetlands Commission in
19 this proceeding?

20 MS. KELSEY: She's advising --

21 MR. SINCLAIR: She is our counsel advising
22 us with regard to legal procedures.

23 MR. FISHER: Is there a reason why she's
24 not present at the table and cross-examining AT&T and

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 participating in the procedural aspects of the
2 proceeding?

3 MS. KELSEY: We can't afford --

4 MR. SINCLAIR: We can't afford to pay her
5 in that capacity and --

6 MR. FISHER: Well she's here.

7 MR. SINCLAIR: Yeah, but she chooses not
8 to be counsel of record. I think that's appropriate.

9 MR. FISHER: But you retained her
10 specifically in February to be counsel in the Docket 409
11 proceeding is what it says?

12 MR. SINCLAIR: Yes, to advise us on legal
13 procedures.

14 MR. FISHER: Does that mean that she's
15 helped in assisting you in writing various documents,
16 including the prehearing brief?

17 MR. SINCLAIR: Yes, she most certainly
18 has.

19 MR. FISHER: And has she been assisting
20 you back to 2009 when you first started to hear about
21 this proposal?

22 MR. SINCLAIR: I -- 2009 -- the problem -
23 - I'm not sure -- I -- I'm not sure whether it goes back
24 that far, but it certainly goes back to the bulk filing.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. FISHER: And it's somewhat beyond the
2 scope and I'm not -- is this a gift of services, is this
3 pro bono, is it paid for by third-parties? It's not by
4 the taxpayers I assume?

5 MR. SINCLAIR: It's not a taxpayer
6 expense, you are correct.

7 MR. FISHER: So it's a gift by others of
8 some services or an economic gift to the actual
9 commission?

10 MR. SINCLAIR: I'm not sure why that's
11 relevant here. I don't have anything to hide, but --

12 CHAIRMAN STEIN: Alright, so why don't we
13 move on to just a few -- a few last questions, Mr.
14 Sinclair. I -- I noticed in the last set of minutes from
15 April 7th of 2013 that you had a special meeting, which
16 actually was at your residence, is that correct?

17 MR. SINCLAIR: Yes, it is.

18 MR. FISHER: Okay. And you live at 201
19 Under Mountain Road?

20 MR. SINCLAIR: I do.

21 MR. FISHER: And it's not really clear
22 what the purpose of the meeting was because you went into
23 executive session to discuss legal strategy, is that
24 correct?

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. SINCLAIR: Yes.

2 MR. FISHER: Okay. From your home on 201
3 Under Mountain Road, do you believe you're going to have
4 a view of the proposed facility?

5 MR. SINCLAIR: All day long.

6 MR. FISHER: So your participation in the
7 proceeding is not just as the chair of the Conservation
8 Commission, but it also is personal --

9 MR. SINCLAIR: My participation in this
10 proceeding is as Chair of the Inland Wetlands and
11 Conservation Commission.

12 Initially, going back to my first interest
13 in this on Cobble Hill, I believe in 1995, there was no
14 indication that a tower would be, so to speak, in my
15 face. The Docket 409 tower was not in my face, you were
16 hardly visible. This one here I have to wonder whether
17 AT&T is trying to punish me in some way.

18 MR. FISHER: I assure you that's not the
19 case. I just found out by looking at these minutes
20 yesterday that you actually lived at 201 Under Mountain
21 Road --

22 MS. KELSEY: Could I --

23 MR. FISHER: -- so that's knowledge to us
24 --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. KELSEY: Could I just make a comment?
2 I'm Susan Kelsey, the secretary who wrote these, and I
3 will take responsibility for using the term to discuss
4 legal strategy. I can't really, I'm sorry, give you a
5 real reason for saying that, other than that we just felt
6 that would give us the ability to discuss in private how
7 to -- how to go about doing this whole process.

8 MR. FISHER: And you'd -- and you'd have
9 to have some exemption to be able to go into executive
10 session from the freedom of information process --

11 MS. KELSEY: Well no, because that's
12 making it sound like that I deceitfully put that in just
13 to eliminate other people's presence. And that wasn't
14 the case. But --

15 MR. FISHER: I'm just noting that you'd
16 have to have an exception under state law to go into
17 executive session.

18 MS. KELSEY: You would have to.

19 MR. FISHER: Right --

20 MS. KELSEY: I -- I believe you do --

21 MR. FISHER: Right --

22 MS. KELSEY: -- I believe you do.

23 MR. FISHER: Correct --

24 MS. KELSEY: I don't profess to be a legal

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 person.

2 MR. FISHER: Okay. I do have --

3 MS. KELSEY: I have to abide by what's
4 required. We announce every meeting within the time
5 restraints. We try to do our best.

6 MR. FISHER: No, I appreciate that. I
7 just was reviewing the minutes and trying to understand
8 the purpose of the meeting.

9 MS. KELSEY: Mmm-hmm.

10 MR. FISHER: I do have some questions for
11 Mr. Cooper as well. Mr. Cooper, are you currently a
12 principal in and employed by AKF Technologies?

13 MR. COOPER: No.

14 MR. FISHER: No, okay. So -- your resume
15 did indicate that. So you're no longer employed there?

16 MR. COOPER: No, I'm retired from there.

17 MR. FISHER: Retired, okay. So -- so your
18 presence here today is as a consultant to the commission
19 simply in your private capacity?

20 MR. COOPER: That's correct.

21 MR. FISHER: Okay. I did have a chance to
22 just review your resume. Did you -- were you ever
23 responsible for an actual cellular network operator in
24 the design of their network in a macro environment like

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 this?

2 MR. COOPER: Yes, but not in this country.
3 I designed networks in Australia in conjunction with the
4 2000 Sidney Olympics.

5 MR. FISHER: I remember that from many
6 years ago when we had a chance to talk. So you did like
7 an in-building stadium system --

8 MR. COOPER: Stadium yes --

9 MR. FISHER: -- for the Olympics --

10 MR. COOPER: -- and the whole Olympics
11 complex.

12 MR. FISHER: But not a macro environment
13 like this?

14 MR. COOPER: Well it's an Olympic village
15 and there's thousands of people and it falls in the --

16 MR. FISHER: Yeah, actually I did -- well
17 that's why I was asking about AKF because I saw that
18 their specialty is really kind of an IT environment in --
19 in a built environment is what it says on the website at
20 least --

21 MR. COOPER: Correct --

22 MR. FISHER: -- so something like an
23 Olympic stadium or an in-building system?

24 MR. COOPER: Mmm-hmm.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. FISHER: Okay.

2 MR. COOPER: Primarily.

3 MR. FISHER: Okay. When were you retained
4 by the Inland Wetlands Commission to provide your
5 testimony?

6 MR. COOPER: I don't recall the date, but
7 it was last month I believe.

8 MR. FISHER: So -- so it was this year?

9 MR. COOPER: It was recently.

10 MR. FISHER: Okay. Could you refer to
11 your testimony from April 23rd, I had some questions
12 about that.

13 MR. COOPER: Okay.

14 MR. FISHER: I'll go in order of the
15 points that you raised because I have questions about
16 some of the points. You had them point 1 through 8 -- or
17 paragraph 1 through 8.

18 So with Point 1, you had some opinions
19 about AT&T's RF engineering, and you used words like
20 inaccurate, intentionally misleading, errors,
21 discrepancies. Is that accurate?

22 MR. COOPER: That's -- that's accurate,
23 yes.

24 MR. FISHER: Okay. And you based that --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 COURT REPORTER: Sir, you need to bring
2 that microphone up closer to you.

3 MR. FISHER: You base that I believe on a
4 coverage map that was in the Council's findings of fact
5 that were submitted as part of the motion that was made
6 by AT&T, is that correct?

7 MR. COOPER: That's -- yeah, that's the
8 main source. I did review the entire record that I was
9 able to obtain, but I looked primarily at the motion to
10 reverse -- I believe it's called --

11 MR. FISHER: Okay. Well -- and that was -
12 - that was going to be my question because can you -- if
13 you have it, and if not, I'll provide it to you -- can
14 you go to AT&T's original application from 2010? Do you
15 have that? Or I can give it to you --

16 MR. COOPER: I don't have that in front of
17 me.

18 MR. FISHER: Okay --

19 MR. COOPER: I guess I do.

20 MR. FISHER: Just if you could flip to the
21 first tab and you should find some coverage plots.

22 MR. COOPER: Which tab is that?

23 MR. FISHER: Right behind Tab 1 in the
24 application.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. COOPER: Okay.

2 MR. FISHER: Okay. If you could just take
3 a look at the first plot called existing site coverage.

4 MR. COOPER: Mmm-hmm.

5 MR. FISHER: Okay. Is that the plot you
6 looked at and referred to in your testimony or was it the
7 next plot?

8 MR. COOPER: I actually looked at both.

9 MR. FISHER: You looked at both. But your
10 -- your opinion was based on the second one that talked
11 about existing and proposed site coverage, is that
12 correct?

13 MR. COOPER: Well no, it was -- it
14 referred to both, because I was primarily comparing other
15 information I had to what I saw in this plots and I found
16 discrepancies in both cases.

17 MR. FISHER: Well that's what -- that's
18 what I want to ask questions about. So you -- your
19 testimony says CSC Decision, AT&T 1, Tab 1, and the
20 decision was the Council's document. And the only plot
21 in that document is the second one.

22 MR. COOPER: Okay, fair enough. I did
23 refer to all of them. But in my statement, I only
24 mentioned the --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. FISHER: Right --

2 MR. COOPER: -- which I felt was the only
3 pertinent one because we're not doing Docket 409. This
4 is 409A. And I only looked at 409 for background.

5 MR. FISHER: Your -- your assumptions you
6 made though in your testimony was that the second plot,
7 which shows a proposed site, was actually on-air, and
8 that's what led you to believe there was no correlation
9 with the drive data, isn't that correct? If you can look
10 at the site that says proposed site down in the left
11 corner.

12 MR. COOPER: Are you on the second map of
13 --

14 MR. FISHER: Yes, the second map.

15 MR. COOPER: This is the originally
16 proposed site.

17 MR. FISHER: Actually, it's not. So if
18 you take the first map --

19 MR. COOPER: Subject site is the
20 originally proposed site as I understand it, Barnes Road.

21 MR. FISHER: Flip back to the first plot
22 if you would. That's titled Existing Site Coverage, is
23 it not?

24 MR. COOPER: Okay.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. FISHER: And if you flip to the second
2 one, Existing and Proposed Site Coverage.

3 MR. COOPER: Correct.

4 MR. FISHER: And then what's the third one
5 -- Existing and Proposed and Subject.

6 MR. COOPER: Okay.

7 MR. FISHER: Okay. Let's go to the second
8 one, which you relied on. The proposed site -- do you
9 understand that proposed site for AT&T's purposes means
10 that site is not on-air? Can you see the two stars, one
11 says subject site and one says proposed site?

12 MR. COOPER: Mmm-hmm.

13 MR. FISHER: So proposed site is a
14 completely separate site in Falls Village but that's not
15 on-air. Do you understand that in reviewing these
16 plots?

17 MR. COOPER: You know, it's a little --
18 it's a little confusing. You refer to the subject site
19 on this map. Is that what you're calling the proposed
20 site?

21 MR. FISHER: The subject site is the
22 subject of the application.

23 MR. COOPER: Okay.

24 MR. FISHER: The proposed site if you

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 reviewed all of the application narrative --

2 MR. COOPER: Yes --

3 MR. FISHER: -- is --

4 MR. COOPER: A site at 188 South --

5 MR. FISHER: Yes. Which is a whole
6 separate tower site proposal --

7 MR. COOPER: I understand that.

8 MR. FISHER: Right. So when you reviewed
9 this map, I could understand how you might be confused
10 that you thought the drive data didn't line up with this
11 because that's not really existing coverage. The
12 existing coverage is the first one, which the drive data
13 correlates pretty nicely to, doesn't it?

14 MR. COOPER: Okay, but it's -- it doesn't
15 match this either. I may have in my statement referred
16 to the wrong map, but the -- the point is the drive test
17 data is not consistent with the propagation map data.

18 MR. FISHER: Do -- do you think that you
19 could ever get perfect alignment between a drive data and
20 a model?

21 MR. COOPER: No, but I think there should
22 not be major discrepancies. Some -- some differences can
23 be explained by the nature of propagation modeling and
24 the fact that drive tests take place at a given time and

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 a given season --

2 MR. FISHER: Sure --

3 MR. COOPER: -- and conditions can vary.
4 So yeah, there will be some differences.

5 MR. FISHER: So -- so maybe when AT&T's
6 witnesses are back, you can ask about those. But your
7 opinion in Section 1 of your testimony really relates to
8 the second plot and not the existing coverage in making
9 an argument that they didn't correlate with the second
10 plot, right?

11 MR. COOPER: I'm making the argument that
12 they don't correlate --

13 MR. FISHER: Now you are --

14 MR. COOPER: -- with the plot.

15 MR. FISHER: Now you are. I understand.
16 Alright, let's -- let's move on to some of the other
17 aspects of your testimony. You -- you're not an
18 attorney?

19 MR. COOPER: No, I'm not.

20 MR. FISHER: But in your testimony in
21 Point 3, you talked about the need to comply with local
22 regulation, correct?

23 MR. COOPER: That's correct.

24 MR. FISHER: Okay. Do -- do you

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 understand in the proceedings that the Siting Council
2 actually takes those regulations in as guidance and they
3 assess whether or not an applicant should address them?

4 MR. COOPER: That's my understanding.

5 MR. FISHER: Okay. I noticed in your next
6 point that you talked about the exiting CL&P structures
7 and you stated specifically that AT&T's response
8 regarding the feasibility of using those structures was
9 inadequate. Is that correct?

10 MR. COOPER: That's correct.

11 MR. FISHER: And you were referring back
12 to some responses AT&T gave to the Council in January of
13 2011, correct?

14 MR. COOPER: That's correct.

15 MR. FISHER: Okay. I went back and
16 reviewed those and I didn't see any questions from the
17 Council that asked about the feasibility of using those
18 structures. They asked some questions about the height
19 and location. So it's your interpretation of the
20 question --

21 MR. COOPER: I would have to go back and
22 re-read the interrogatories. I believe the Council did
23 ask that question in some form and I believe that was the
24 source.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. FISHER: So your --

2 MR. COOPER: I could be mistaken.

3 MR. FISHER: So it's your interpretation
4 of the question and maybe you would have liked a little
5 more information?

6 MR. COOPER: That's correct.

7 MR. FISHER: Did -- did the commission ask
8 AT&T for a little more information in any interrogatory?
9 Your -- your client.

10 MR. COOPER: I don't know. My point there
11 is that however -- whatever form the question may have
12 been asked in, the response that I found in reviewing the
13 record was -- it seemed to be inadequate because it
14 didn't provide any justification back. It just said that
15 it was not feasible.

16 MR. FISHER: Are you aware that your
17 client asked AT&T over 70 questions in this most latest
18 docket in the form of interrogatories?

19 MR. COOPER: Mmm-hmm -- yes, I am.

20 MR. FISHER: Did you help them draft those
21 interrogatories?

22 MR. COOPER: Not the original set. I was
23 not involved in that at that time. I did assist in some
24 later interrogatories, a much smaller set.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. FISHER: So did you ask AT&T to give
2 any further information on the inadequacy -- or
3 feasibility of these structures?

4 MR. COOPER: No. I was merely pointing
5 out that typically when an applicant rejects a site as
6 being not feasible, they submit some sort of information
7 to support the statement rather than to say, oh, it won't
8 work. That was my point.

9 MR. FISHER: Well --

10 MR. COOPER: My point there is that the --
11 I feel that the Applicant was -- did not exercise the
12 degree of diligence that I would expect someone to do in
13 a case of this importance given the environmental
14 consequences and the public concern about the proposed
15 site.

16 MR. FISHER: You said you read the entire
17 application record, including 2010. Did you see AT&T's
18 submissions on alternative sites that included the CL&P
19 structures and the discussion of that?

20 MR. COOPER: Yes.

21 MR. FISHER: So -- so they actually did
22 address it in the application?

23 MR. COOPER: Yes. I felt it was --

24 MR. FISHER: You just thought a little

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 more information would be helpful?

2 MR. COOPER: I would like to have seen
3 some more -- a more -- a more rigorous response from
4 them, such as a propagation map or some other evidence
5 that --

6 MR. FISHER: But you didn't ask for it?

7 MR. COOPER: No, I didn't ask for it.

8 MR. FISHER: Okay, very good. With
9 respect to Point 5 in your testimony, I just wanted to
10 address that as well. You had again a discussion, I
11 would say, that AT&T's submissions were inadequate. Is
12 that a fair characterization of that point in your
13 testimony related to the coverage plots themselves?

14 MR. COOPER: You're referring to Point 5?

15 MR. FISHER: Point 5, yes. There's a
16 discussion there that you provided about the signal level
17 thresholds and what's been provided to the Council and
18 that those were somehow inadequate.

19 MR. COOPER: I feel that it's more
20 informative for an applicant to submit multi-level
21 propagation plots because typically one or two level
22 plots, such as these, could give an impression because of
23 the large white areas that there's no service whatsoever
24 in those areas. And the Council I think knows -- and to

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 their credit I believe they've asked for multi-level
2 plots in the past just to see where there is some degree
3 of coverage rather an almost you might say black or white
4 presentation, which these types of maps produce.

5 MR. FISHER: Actually it was green and
6 yellow, right, and the different thresholds?

7 MR. SINCLAIR: Correct.

8 MR. FISHER: Okay. The -- but you're
9 suggesting in your testimony that it was somehow
10 inaccurate. You didn't ask for signal level threshold
11 plots to be provided in '92, did you?

12 MR. COOPER: No, I wasn't involved at that
13 time.

14 MR. FISHER: Okay. And you're not aware
15 of your client asking for that information ever, are
16 you?

17 MR. COOPER: No.

18 MR. FISHER: Okay. Your testimony then --
19 you just testified that the Council to their credit
20 understands that, but your testimony here says that
21 somehow AT&T left them with some false impression?

22 MR. COOPER: I think that's potentially --
23 I think that's why -- I don't know, I can't speak for the
24 Council. I know in the past they've asked for those.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 After receiving plots of this type, they've asked for the
2 multi-levels -- I believe they have and received them.

3 MR. FISHER: Do -- do you have any
4 evidence associated with AT&T's testimony before the
5 Council over the last 20 years that would even support
6 that kind of statement?

7 MR. COOPER: I -- I can't say that the
8 Council has been influenced one way or another by past
9 cases that I have not participated in and have no
10 knowledge of.

11 MR. FISHER: So this is really just your
12 perception?

13 MR. COOPER: Yes.

14 MR. FISHER: Okay. I wanted to ask some
15 questions as well about Point 6, which talks about --

16 MR. LYNCH: Mr. Fisher, before you go on,
17 can I just ask one question?

18 MR. FISHER: Yes, sir.

19 MR. LYNCH: Mr. Cooper, you used the term
20 street level. And I'm pretty sure I know what you're
21 talking about, but this is the first time I've actually
22 heard that in an RF submission. Is that a commonly used
23 term or is that just something that's evolving?

24 MR. COOPER: There's a lot of terminology

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 in the field and a lot of it is confusing and it --
2 different applicants in different locations use different
3 terminology. Actually, there's an AT&T case in
4 Massachusetts where AT&T used this term, and that's why I
5 used it. And maybe in this case --

6 MR. LYNCH: I understand what you're
7 saying --

8 MR. COOPER: Yeah --

9 MR. LYNCH: -- but it's the first time
10 I've seen the term and --

11 MR. COOPER: Yeah, it's -- that's used.
12 Free space level is sometimes used. Outdoor coverage
13 level is sometimes used. They're all the same. They're
14 -- they're the signal strength that a person standing
15 outdoors would receive.

16 MR. LYNCH: Thank you.

17 MR. FISHER: So with respect to Point 6 in
18 your testimony, you -- you referenced -- I believe you
19 were referring to Section 704 of the Telecommunications
20 act, is that correct?

21 MR. COOPER: Yes, sir.

22 MR. FISHER: And the premise I assume with
23 respect to your testimony there is regarding the federal
24 regulation of emissions from facilities like this, is

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 that correct?

2 MR. COOPER: Correct.

3 MR. FISHER: Okay. Are you aware of FCC
4 regulations that specifically exclude tower sites like
5 this from routine monitoring under their regulations?

6 MR. COOPER: No.

7 MR. FISHER: So you're not aware of the
8 categorical exclusion for --

9 MR. COOPER: That has nothing to do with
10 monitoring. It has to do with demonstrating compliance
11 with the human exposure standards.

12 MR. FISHER: Chairman, just -- just for a
13 citation for the record for later use by us, I'd like to
14 refer to 47 Code of Federal Regulation 1.1 307 and some
15 additional regulations in that particular area.

16 So you also cited in this area of your
17 testimony the cellular phone task force, which I think
18 actually Attorney Seymour litigated on behalf of the
19 plaintiffs in that case against the FCC, is that
20 correct?

21 MR. COOPER: That's correct.

22 MR. FISHER: And have you had a chance to
23 review AT&T's submission of the power density analysis
24 for this particular site?

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. COOPER: Yes, I did.

2 MR. FISHER: And it shows compliance, does
3 it not?

4 MR. COOPER: Yes, it did.

5 MR. FISHER: Okay. In your experience do
6 you have any reason to believe that an AT&T facility like
7 this at 120 feet above grade on a tower that's more than
8 500 feet from the nearest occupiable structure would not
9 comply with the public exposure standard?

10 MR. COOPER: I'd say it's unlikely that it
11 would not comply. However, my point there was not that
12 particular point. The point was that the Applicant has
13 made an inaccurate statement to the Council and it should
14 -- it should be cleared up.

15 MR. FISHER: Well you're -- you're saying
16 it's made an inaccurate statement based on your belief of
17 what the rules and regulation are, but you're not a
18 lawyer, right?

19 MR. COOPER: No, I'm not a lawyer.

20 MR. FISHER: And you weren't aware of the
21 regulation I just cited?

22 MR. COOPER: I've read the regulations and
23 I -- I'm not aware of any federal regulation that
24 precludes routine monitoring.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. FISHER: So your --

2 MR. COOPER: The categorical exemption
3 does not refer to monitoring.

4 MR. FISHER: So your position on behalf of
5 your client would be that the Council or a local zoning
6 agency could legally require ongoing monitoring of
7 emissions?

8 MR. COOPER: Yes.

9 MR. FISHER: Okay. And then the same
10 question, you noted the absence of an accumulative
11 analysis, even though there's no other particular parties
12 in terms of wireless carriers here --

13 MR. COOPER: Right --

14 MR. FISHER: -- any reason to believe that
15 if three more carriers when on a tower site like this,
16 that it wouldn't comply?

17 MR. COOPER: I don't know.

18 MR. FISHER: Have you ever seen in your
19 experience four cellular carriers on a tower typically
20 operating and not compliant?

21 MR. COOPER: I haven't had that
22 experience, but it's a possibility.

23 MR. FISHER: Okay. Alright, I -- some
24 final questions related to Point 8 in your testimony. I

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 -- I did hear the testimony earlier, so this is related
2 to the propagation that you prepared for the Conservation
3 Commission. The -- the Conservation Commission gave you
4 rough coordinates for that is what I understood, is that
5 correct?

6 MR. COOPER: That's correct.

7 MR. FISHER: Okay. Did you know or have
8 you reviewed their latest submission to the Council that
9 that site is not being made available by the town?

10 MR. COOPER: Say that again please.

11 MR. FISHER: As a leasing matter, did you
12 know that before or after you ran the plot that the town
13 was simply not going to make that property available?

14 MR. COOPER: I -- I wasn't aware one way
15 or the other.

16 MR. FISHER: So you just simply did the
17 plot?

18 MR. COOPER: That's correct.

19 MR. FISHER: Okay.

20 MR. COOPER: And I might say that the plot
21 was done, again as I said before, at or near the town
22 owned property.

23 MR. FISHER: Well you said you wouldn't be
24 aware of --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 COURT REPORTER: Your microphone please.

2 (pause)

3 CHAIRMAN STEIN: Mr. Fisher, are we
4 close?

5 MR. FISHER: I'm going to be done in about
6 five minutes --

7 CHAIRMAN STEIN: Okay. We'll just
8 subtract that from your lunch break -- we'll reduce your
9 lunch break by that --

10 (pause)

11 MR. FISHER: (Indiscernible) -- for Mr.
12 Cooper and then -- then I'll be done with cross-
13 examination. So referring back to Point 8 in your
14 testimony, so you wouldn't be aware of any of the land
15 use patterns in that particular area around that site
16 that you hypothetically modeled?

17 MR. COOPER: I believe the land around the
18 site is privately owned.

19 MR. FISHER: Privately owned. So -- so
20 you wouldn't be aware though if it's shown for example in
21 the plan of conservation and development as open space,
22 would you?

23 MR. COOPER: No.

24 MR. FISHER: Okay. It seems somewhat like

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 a moot point, but I do have a couple of questions about
2 your methodology. What kind of propagation model tool do
3 you use?

4 MR. COOPER: I use the propagation model
5 called IBC. It's produced by Site Safe Corporation in I
6 believe Alexandria, Virginia. I'm aware that AT&T
7 typically uses, and I believe used in this case an Yoka
8 Mira base model. The primary difference being that the
9 model I used is mainly deterministic, whereas the Yoka
10 Mira is a puristic model, which uses statistical data for
11 calibration. They can both provide fairly accurate
12 results within the limitations of computer modeling.

13 MR. FISHER: Does -- does the model use
14 land cover data --

15 MR. COOPER: Yes, it does. Upland cover
16 land use.

17 MR. FISHER: And -- and relative to Point
18 1 in your testimony you talked about drive data. Do you
19 collect any drive data to calibrate the model?

20 MR. COOPER: No, I did not prior to
21 running the plot. I did use -- I did compare it with the
22 AT&T drive data however.

23 MR. FISHER: Chairman, I'm just going to
24 submit for the record the prior testimony of Mr. Cooper

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 in Docket 347.

2 (pause)

3 MR. FISHER: Mr. Cooper, this is testimony
4 I believe you provided in Docket 347 for the Council in
5 2007. Do you --

6 A VOICE: (Indiscernible) --

7 MR. FISHER: 347, yes. Oh, I'm sorry,
8 Docket 347 for the record. Do you recall providing that
9 testimony?

10 MR. COOPER: I'd have to familiarize
11 myself with it again. I -- it looks --

12 MR. FISHER: Could -- could you just go
13 down to the third paragraph on the first page, the second
14 sentence, excuse me, and just read that.

15 MR. COOPER: Yes, I do --

16 MR. FISHER: Could you just read that for
17 me, that second sentence.

18 MR. COOPER: Drive testing generally
19 provides a more accurate indication of coverage along
20 highways than does predictive propagation modeling if
21 drive test data is necessary for the calibration of the
22 applicant's propagation model.

23 MR. FISHER: And then you went on to say
24 that you thought the application's propagation model

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 which didn't have drive data in that case might be
2 flawed?

3 MR. COOPER: That's correct.

4 MR. FISHER: So the same could be said
5 about your model, it could be flawed --

6 MR. COOPER: I used the -- no, for two
7 reasons. (1) My model is a deterministic model. It does
8 not require calibration, unlike the Yoka Mira model which
9 was used by AT&T, which was actually developed in Tokyo,
10 and when it's applied anywhere else in the world, has to
11 use local data and measurements for calibration to be
12 reasonably accurate. The IBC model is not of that type.
13 It is a deterministic model that works on the physics of
14 the radio propagation --

15 MR. FISHER: So --

16 MR. COOPER: -- and not a statistical
17 process.

18 MR. FISHER: So your -- you think your
19 model actually is not flawed and that it's not somehow
20 over-predicting coverage?

21 MR. COOPER: No, I don't believe so.

22 MR. FISHER: Okay. Alright, thank you.

23 Thank you, Chairman.

24 MS. KELSEY: Mr. Chairman, can I just make

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 a statement -- a quick statement? I -- just for the
2 record, I would like it to go on the record that we --
3 the Inland Wetlands and Conservation Commission questions
4 the ability of Cuddy and Feder to present all these
5 documents at the last minute where we have been led to
6 believe that anything that we presented had to meet
7 certain deadlines in order for review, it had to be
8 prefiled. I just wanted to go on the record with that.
9 I feel it is unfair to our witnesses to be put on the
10 spot. It's unfair to us to review a town plan that we
11 haven't even seen the final rendition of. Period. Thank
12 you.

13 CHAIRMAN STEIN: Thank you. Just to try
14 to finalize cross-examination, again do we have the
15 Chairman of the Planning and Zoning Commission? No. Do
16 we -- do we have -- wait, I'm -- I'm still the Chair, so
17 -- wait, wait, wait -- and do we have either Mr. Rosen or
18 Miss Pinsky here? No, we don't.

19 You have about one minute because we are
20 going to break for lunch because at 2:00 o'clock we have
21 to be here for another matter. So what is your --

22 MR. SINCLAIR: Only the Planning and
23 Zoning Commission could not attend today. They have
24 neither the finances nor the time and personnel to be

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 able to be here at this time, but they do support our
2 efforts. Thank you.

3 CHAIRMAN STEIN: And I think you're aware
4 that there will be a subsequent and maybe even two
5 subsequent meetings. We are going above and beyond what
6 we usually do to allow people -- to accommodate people's
7 needs.

8 So at that we're going to break for lunch.
9 And at about 2:15 we'll resume this portion of it. We do
10 have another short matter we have to take up at 2:00
11 o'clock. Thank you.

12 (Whereupon, a luncheon recess was taken at
13 1:02 p.m. to 2:15 p.m.)

14 CHAIRMAN STEIN: Good afternoon. We're
15 going to resume the portion of the hearing that we left
16 off on earlier today. So we're going to continue with
17 the appearance of the Applicant and then have -- then
18 start the cross-examination -- or restart the cross-
19 examination.

20 And I believe, Attorney Chiocchio, you
21 have a witness that has to be sworn in, and then some new
22 exhibits to verify. Is that correct?

23 MS. CHIOCCHIO: Yes. Thank you, Chairman.
24 Mr. Dean Gustafson needs to be sworn in.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 (Whereupon, Dean Gustafson was duly sworn
2 in.)

3 MS. BACHMAN: Thank you.

4 CHAIRMAN STEIN: And would you proceed to
5 verify the new exhibits marked as Roman Numeral II --
6 Item B-6, is that correct?

7 MS. CHIOCCHIO: We have two items listed
8 in the program under B-6 and B-7, the Applicant's
9 Responses to Siting Council Interrogatories, Set 2, dated
10 May 14th; and the Applicant's Updated Responses to Siting
11 Council Interrogatories, Set 2, dated May 16th.

12 I'll ask each of my witnesses a series of
13 questions to verify the exhibits. I'll start with Mr.
14 Gustafson on my right. Did you prepare --

15 A VOICE: (Indiscernible) --

16 MS. CHIOCCHIO: Yes. Did you prepare and
17 assist in the preparation of the items identified?

18 MR. DEAN GUSTAFSON: Yes, I did.

19 MS. CHIOCCHIO: Mr. Libertine.

20 MR. MICHAEL LIBERTINE: Yes.

21 MR. ANTHONY WELLS: Tony Wells. Yes.

22 MR. PETER PERKINS: Peter Perkins. Yes.

23 MR. DAVID VIVIAN: David Vivian. Yes.

24 MS. CHIOCCHIO: Do you have any

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 corrections or clarifications to the information
2 contained therein?

3 MR. GUSTAFSON: Dean Gustafson. No.
4 MR. LIBERTINE: Mike Libertine. No.
5 MR. WELLS: Tony Wells. No.
6 MR. PERKINS: Peter Perkins. No.
7 MR. VIVIAN: David Vivian. No.
8 MS. CHIOCCHIO: Is the information
9 contained therein true and accurate to the best of your
10 belief?

11 MR. GUSTAFSON: Dean Gustafson. Yes.
12 MR. LIBERTINE: Mike Libertine. Yes.
13 MR. WELLS: Tony Wells. Yes.
14 MR. PERKINS: Peter Perkins. Yes.
15 MR. VIVIAN: David Vivian. Yes.
16 MS. CHIOCCHIO: And do you adopt it as
17 your testimony in this proceeding today?

18 MR. GUSTAFSON: Dean Gustafson. Yes.
19 MR. LIBERTINE: Mike Libertine. Yes.
20 MR. WELLS: Tony Wells. Yes.
21 MR. PERKINS: Peter Perkins. Yes.
22 MR. VIVIAN: David Vivian. Yes.
23 MS. CHIOCCHIO: We ask that the Council
24 accept the items as full exhibits.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 CHAIRMAN STEIN: (Indiscernible) -- sorry.
2 Does any of the parties or intervenors object to the
3 admission of the Applicant's new exhibits? Hearing and
4 seeing none, the exhibits are admitted.

5 (Whereupon, Applicant Exhibit No. 6 and
6 No. 7 were received into evidence.)

7 CHAIRMAN STEIN: We're now going to
8 continue with the cross-examination. I'm going to ask
9 Mr. Rovezzi to start.

10 (pause)

11 MR. ROVEZZI: So I'm not sure which of you
12 may have the appropriate answer to this, but I would like
13 to ask have you walked the access road up to the cell
14 tower site? Which of you have walked?

15 CHAIRMAN STEIN: I think a show of -- I
16 think you have to say it verbally. I don't think a show
17 of hands --

18 MR. LIBERTINE: Mike Libertine. I have
19 several times.

20 MR. GUSTAFSON: Dean Gustafson. I have.

21 MR. WELLS: Tony Wells. I have.

22 MR. PERKINS: Peter Perkins. I have.

23 MR. VIVIAN: Dave Vivian. I have.

24 MR. ROVEZZI: And do you have a listing of

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 the specific dates that you have walked up that access
2 road to the top where the proposed tower site is? (No
3 audible response). In any of your trips up the access
4 road, did you happen to see any surface water in the form
5 of a spring or leaching or standing water?

6 MR. LIBERTINE: On my trips -- Mike
7 Libertine -- I've seen it in the winter and early spring
8 of 2013. Certainly during the prior certificate site
9 application, I also walked it several times. I've only
10 seen snow and ice and melt-off from that type of a
11 situation on the road itself.

12 MR. GUSTAFSON: And in March -- Dean
13 Gustafson -- in March and April of this year I inspected
14 the entire project area and did not identify any springs
15 or seeps as part of the wetland investigation within 200
16 feet of the proposed activities.

17 MR. ROVEZZI: Well I own the 25 acres,
18 which essentially is also on the same side of the access
19 road as Cobble Hill. And I also have the property which
20 borders a certain segment of the road on the northern
21 portion of my property. And I can tell you that there
22 are as many as 12 springs that exist on my property. And
23 some of those springs actually are in plain view of the
24 road because I hike that road often. And you cannot

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 determine where that water is going to come out on Cobble
2 Hill --

3 A VOICE: (Indiscernible) -- a question -
4 -

5 MR. ROVEZZI: I'm sorry. Under Tab 2,
6 AT&T's responses to Siting Council interrogatories, is a
7 Map C-02A. Can you refer to that? You are proposing
8 realigning the access road. May I ask why?

9 MR. PERKINS: It's our understanding that
10 at -- where the road is currently shown goes across
11 property that was not party to the easement. Our
12 suspicion is that the road had migrated at some point off
13 the property that has the easement.

14 MR. ROVEZZI: And how did you come to that
15 understanding?

16 MR. PERKINS: By the fact that it's -- the
17 road is not contained within the property that has the
18 easement defined in its deed.

19 MR. ROVEZZI: I'm sorry? Say that again.

20 MR. PERKINS: The road is not located
21 wholly within the property that contains the easement in
22 its deed.

23 MR. ROVEZZI: Well the current road
24 location has been there for over 25 years and was

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 constructed by the Ferrinoes and accepted by Joe Baker,
2 the original owner of the property and has been accepted
3 by all parties to the easement, including that individual
4 -- those individuals who you claim have -- may traverse
5 over as it results from the original easement. So I'm
6 not sure what evidence you can provide that would suggest
7 that the road as it currently exists is not part of the
8 original easement. Do you have any evidence at all in
9 terms of a document that supports that?

10 MR. PERKINS: It's just the reference to
11 the easement in the deed.

12 MR. ROVEZZI: In terms of the property on
13 either side of the proposed section of the realignment
14 of the access road, is that property owned by the
15 Ferrinoes?

16 MR. PERKINS: You're talking about the
17 adjacent properties?

18 MR. ROVEZZI: I'm talking about the
19 section of the road where you propose to realign it from
20 where it exists currently. Is the property on either
21 side of that realigned section owned by the Ferrinoes?

22 MR. PERKINS: I do not believe so, no.

23 MR. ROVEZZI: Do you -- do you have
24 permission from the property owner to realign the road on

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 his property or to annex that section of property in
2 order for a road realignment?

3 MR. PERKINS: The realignment of the road
4 is to bring the road into compliance with the deed.

5 MR. ROVEZZI: Have you contacted the
6 property owner and specifically asked him whether this
7 particular realignment is within the current deed and
8 whether you have permission to do this?

9 MR. PERKINS: I have not.

10 MR. ROVEZZI: I have no further
11 questions.

12 CHAIRMAN STEIN: Thank you. The next
13 party for cross-examination would be the Town of Canaan
14 Inland Wetlands and Conservation Commission. Mr.
15 Sinclair.

16 (pause)

17 MR. SINCLAIR: I'm sorry for the delay,
18 Mr. Chairman. When I --

19 AUDIO TECHNICIAN: Your microphone, sir.

20 COURT REPORTER: Your microphone please.

21 MR. SINCLAIR: Yes. Mr. Chairman, I do
22 have a statement to make on behalf of the Inland Wetlands
23 and Conservation Commission. At what point do I have an
24 opportunity to make that statement?

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 CHAIRMAN STEIN: You might as well do it
2 now.

3 MR. SINCLAIR: With no disrespect and with
4 no intent to antagonize the Siting Council, the Inland
5 Wetland and Conservation Commission attends these
6 proceedings under protest. We are required to be here in
7 response to AT&T's proposal for yet another tower site on
8 Cobble Hill, but there has been no finding of changed
9 conditions as apparently should precede any discussion of
10 the viability of a new tower on Cobble Hill.

11 In addition, the Inland Wetlands and
12 Conservation Commission objects that while AT&T is in
13 fact proposing a new tower on Cobble Hill, AT&T has
14 failed to provide a bona fide application as required by
15 state law.

16 Cobble Hill is an upland island surrounded
17 by significant state recognized wetlands, which the Falls
18 Village and the Town of Canaan Inland Wetlands and
19 Conservation Commission is statutorily required and
20 empowered to protect. That is why we are here today.

21 How could anyone versed in environmental
22 sciences fail to recognize the critical ecological
23 relationship between these different but highly
24 independent habitats for resident fauna, especially

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 amphibians and reptiles, many under threat for
2 undetermined reasons, but most probably from loss of
3 habitat, often both results would have -- excuse me --
4 habitat often through fragmentation. I beg your pardon.
5 AT&T concludes that its construction activities and
6 results would have no disruptive effect on the wildlife,
7 yet they have neither conducted an inventory, nor a
8 thorough assessment of the specific wildlife species and
9 habitat requirements.

10 The court upheld the CSC decision to deny
11 the Docket 409 150-foot tower. Rule of law now
12 establishes that the gaps AT&T claimed they need to fill
13 were neither numerous nor substantial enough to justify
14 the intrusion upon this environment, historic, as well as
15 natural. For AT&T to claim a modified tower as a
16 changed condition is vacuous. They create a condition
17 and claim it is a changed condition. What they have
18 created is a tautology, a circular conundrum, not a
19 changed condition.

20 I say irrevocably that we as stewards of
21 this land are charged with the responsibility to see that
22 it is not compromised, not today, not tomorrow, not ever.
23 Thank you very much.

24 MR. LYNCH: Mr. Sinclair.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. SINCLAIR: Yes, sir.

2 MR. LYNCH: Again with all due respect as
3 you said, have you been subpoenaed to come here today?

4 MR. SINCLAIR: Subpoenaed?

5 MR. LYNCH: Yeah.

6 MR. SINCLAIR: No, I don't believe I have
7 -- no.

8 MR. LYNCH: Then you're coming voluntarily
9 as a representative of the town? You're not being forced
10 to come here?

11 MR. SINCLAIR: No, I'm not being forced to
12 come here, but I come as a representative of the Inland
13 Wetlands of the town.

14 MR. LYNCH: That is understood. Thank
15 you.

16 MR. SINCLAIR: You're very welcome.

17 CHAIRMAN STEIN: Okay. If you have
18 questions, would you please start now.

19 MR. SINCLAIR: I do. First there are some
20 questions with regard to procedure. The sign at the foot
21 of Barnes Road posted on or about April 4th states,
22 quote, "The Council will consider AT&T's request pursuant
23 to CGS Section 4-181a(b) for approval of a new proposed
24 location on the property for construction, maintenance,

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 and operation of a telecommunications tower facility,"
2 end quote. It then goes on to say, quote, "A copy of
3 the application may be reviewed and obtained in Town
4 Hall," end quote. No application for a, quote, "new,"
5 end quote, proposed location for this new
6 telecommunications tower is or ever has been available at
7 our town hall. Please explain how you cannot obey the
8 requirements of state law, including especially
9 notification and consultation as mandated under CGS
10 Section 16-501?

11 MR. FISHER: Chairman --

12 MR. SINCLAIR: Address -- yes --

13 MR. FISHER: Chairman, the question calls
14 for a legal conclusion. I don't believe any of my
15 witnesses have the capacity to answer that question. We
16 can certainly address it as part of a post-hearing
17 brief.

18 CHAIRMAN STEIN: Okay, thank you. The
19 next question please.

20 MR. SINCLAIR: Also said sign and other
21 documents refer to, quote, "new site," end quote,
22 "modified tower site, settlement site," end quote.
23 Please explain why you have promulgated this ambiguity
24 regarding the site?

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. VIVIAN: This is David Vivian. I --
2 on the -- on the sign itself, I don't see reference to
3 modified site and things of that nature. Could you tell
4 me where you're -- I have a picture of the sign and I --

5 MR. SINCLAIR: I'm not referring to it on
6 a map. I'm referring to modified tower site that is used
7 frequently. And I'm sorry, I don't have the specific
8 reference, but you know, as well as I do, that that term
9 modified site or modified tower site is used frequently,
10 as well as settlement site, which is the term used on the
11 map. And as I pointed out before, on the sign it talks
12 about new site. My question is why is it just not
13 settlement site or modified tower site or --

14 MR. VIVIAN: I have -- I have new proposed
15 location on the sign is what I read, which is in fact the
16 case. We're proposing a new location.

17 MR. SINCLAIR: I'm sorry, I can't hear
18 you.

19 MR. VIVIAN: We're proposing a new
20 location on the same parent parcel for the -- for the
21 proposed tower.

22 MR. SINCLAIR: That is your answer?

23 MR. VIVIAN: That's correct.

24 MR. SINCLAIR: In your motion to the

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 Siting Council to reverse its final decision in Docket
2 409 and issue a certificate for a modified tower facility
3 -- so I believe that language comes off the front of your
4 document, your request for modification -- you ask for a,
5 quote, "reversal," end quote, of the Siting Council's
6 decision, Re: The denial of the application for a
7 certificate in Docket 409.

8 Question: Please clarify if you are now
9 asking for CSC approval of the tower specified in Docket
10 409 and denied by the CSC, and further supported by
11 federal court? Is this in addition to the "new proposed
12 location," quote/end quote, or are we looking at a
13 request for two tower sites on Cobble Hill?

14 MR. VIVIAN: No, we're not. We're --
15 we're proposing an alternative location, which we've
16 presented much data and testimony that the new proposed
17 location has less visual impact and less environmental
18 impact and still provides, although not as good coverage
19 as the original location, adequate coverage.

20 MR. SINCLAIR: Thank you. But now it's an
21 alternative location as well as being a modified -- these
22 names proliferate.

23 In your motion to the Siting Council to
24 reverse its final decision on docket -- in Docket 409,

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 Item No. 46 on page 6, you provide the CSC's findings of
2 fact regarding AT&T's failure to produce a title
3 certificate as requested. Please explain why this
4 document is not available?

5 MR. FISHER: I'm sorry, just for
6 clarification of your question, what document is it that
7 you're looking for?

8 MR. SINCLAIR: This is a document that was
9 asked for and it's called a title certificate. It's
10 requested by the Siting Council and it is in their
11 findings of fact and decision. It -- this comes by the
12 way from your own motion to -- to reopen the docket when
13 you repeat the findings of fact that the Siting Council
14 offered for its decision

15 MR. FISHER: Chairman, just a procedural
16 comment. I think we can acknowledge for the record that
17 on behalf of AT&T a motion was filed and there were
18 attachments to the motion, which included the Siting
19 Council's findings, opinion, and decision and order. And
20 because the motion sought to reopen, we thought it
21 appropriate to include those documents. I'm not sure --
22 if you have questions --

23 MR. SINCLAIR: My questions --

24 MR. FISHER: -- that these witnesses can

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 answer beyond that, I'm sure they're happy to answer
2 them.

3 MR. SINCLAIR: My question refers to one
4 of the -- Item 46 in there on page 6 in those findings
5 of fact. And one of the findings of fact was that a
6 title certificate was required by the CSC. And this
7 title was not produced. And I'm asking you to explain
8 why this document title certificate was -- is not
9 available.

10 MR. FISHER: Chairman, with your
11 indulgence, I reviewed Finding of Fact 46, which is a
12 Council finding, and at the end it states the Council
13 requested that AT&T produce a title certificate and no
14 such submission was made by the close of the record. We
15 agree that AT&T has not submitted a title certificate and
16 has not proposed to submit one.

17 MR. SINCLAIR: Is AT&T aware that no
18 permits were apparently sought, obtained, or filed, hence
19 unavailable for either the construction of the cabin on
20 Cobble Hill or for the revisions of the old logging trail
21 to create the present basis for the access-way?

22 MR. VIVIAN: We hadn't gone back through
23 the record as far as zoning for the hunting lodge because
24 it's not part of this docket or our application.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. SINCLAIR: Thank you. Is AT&T aware
2 that there are not available in the land records any A2
3 surveys on the Ferrinoes Cobble Hill properties
4 subsequent to two litigations involving -- evolving --
5 involving abutting properties, one in 2005 and one more
6 recently?

7 MR. PERKINS: I am aware that there were
8 two court cases on the subject property, yes.

9 MR. SINCLAIR: Okay, thank you. Please
10 clarify the following: (1) Why does the lack of these
11 legal documents not alert AT&T to the questionable
12 legitimacy of the property lines as revealed in the April
13 30th hearing by Mrs. Piltz; and (2) Why is AT&T not
14 alerted to the real possibility that it should require
15 absolute proof of its legal use of both the access road
16 and the property upon which the new tower is being
17 proposed?

18 MR. PERKINS: The map -- the property map
19 prepared for the application does reflect the two court
20 cases on the property line.

21 MR. SINCLAIR: It is my understanding that
22 those are not A2 surveys or property maps that were
23 provided by Mr. Ferrino. They are back-end maps that
24 were provided and commissioned, if you will, by the

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 abutting property owners.

2 CHAIRMAN STEIN: Is that a question or a
3 statement? You have to --

4 MR. SINCLAIR: No, it was simply a
5 response to what he said, Mr. Chairman.

6 I'll move on with questions then. These
7 have to do with wildlife. When asked has an inventory of
8 flora and fauna in the vicinity of the additional access
9 drive and the new tower site been conducted, please
10 provide a full inventory and name and contact information
11 for those whom performed it, and the AT&T response to
12 our Interrogatory No. 38 referred to a letter after Tab
13 4, which made no mention of fauna other than White-Tailed
14 Deer, and stated that the herbaceous layer of flora was
15 not documented apparently due to the season. Please
16 explain Mr. Libertine's comment during the April 30th
17 hearing that there would be no adverse impact to wildlife
18 from the long-term perspective with your never having
19 made an inventory of the wildlife on Cobble Hill?

20 MR. LIBERTINE: Well I'll speak to my
21 comment. This is Mike Libertine. That was in response
22 to a general question about environmental impact of the
23 proposed development. And based on what I know today of
24 that property and my experience with cell sites over the

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 last 17 plus years and the fact that from all the
2 published documentation that we've reviewed, we have not
3 found that there are any rare or threatened species
4 utilizing that particular property, I came to the
5 conclusion that, all things being equal, these
6 developments, which are relatively modest in size,
7 typically do have the potential to displace on a
8 temporary basis during construction some of the wildlife
9 that uses the property, but over time it's been our
10 experience that they don't bother them and they replenish
11 and use the surrounding area. And that was based on the
12 fact that there's significant habitat of a similar nature
13 both on the property and on adjacent properties.

14 MR. SINCLAIR: Thank you.

15 MR. GUSTAFSON: I would just add to that
16 the -- that although the flora survey that was provided
17 in response to that interrogatory did not include a full
18 herbaceous survey because of the time of year restriction
19 the survey was conducted.

20 We did characterize the general habitat as
21 a study area, which is essentially an Oak dominant
22 forest, which occurs on thin glacial till with exposed
23 bedrock that is acidic in nature and is fairly typical
24 for that type of habitat in Northwestern -- in

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 Connecticut -- in contrast to some of the unique habitat
2 that is located in the surrounding area, such as some of
3 the limestone peaks and valleys, as well as the limestone
4 influenced marshes, which are considered unique habitats.
5 So based on the more general habitat that characterizes
6 the study area being somewhat typical, we felt that --
7 although you're correct no flora/fauna survey was
8 performed, we felt that because it does represent a more
9 typical habitat, that it would not result in a
10 significant impact to wildlife that would typically use
11 that forest habitat considering the type of development
12 that's being proposed, which is unoccupied, has low
13 traffic generation, a relatively narrow access drive, and
14 the compound development is -- as I said is unoccupied,
15 unmanned, so there's a low level of human interference or
16 habitation. So I think those -- those are what we kind
17 of draw our conclusions on based on the information we
18 have at hand at this moment.

19 MR. SINCLAIR: Well thank you.

20 MR. GUSTAFSON: You're welcome.

21 MR. SINCLAIR: The record does show in
22 response to your answers however, that -- that Cobble
23 Hill is covered with NDDB circles showing that there are
24 questionable, perhaps rare, perhaps endangered, and

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 perhaps listed species up there unspecified. Just so
2 that that point is part of the record.

3 MR. GUSTAFSON: And if I could just
4 respond? We do understand that fact and we are currently
5 awaiting a response from the Natural Diversity Database
6 regarding our review request for this project. And if
7 for some reason they do come back and state there is the
8 potential for effect, those -- those species and habitats
9 will be more thoroughly evaluated to determine whether
10 this project represents a potential impact to those rare
11 species. So there is -- there is outstanding information
12 that we're awaiting that could result in additional
13 investigation of the project.

14 MR. LIBERTINE: I would just add though,
15 based on the correspondence with the DEP back in 2010,
16 that for the original certificate site, they came back
17 after doing a review and saying there were no such
18 species in the location. And nothing has changed from
19 the database standpoint in terms of what's publicly
20 available. So I'm not disagreeing -- I agree with Mr.
21 Gustafson that we are waiting, but based on that
22 information, the Natural Diversity Database polygons that
23 are depicted on that map obviously have a buffer of a
24 certain area. None of those buffered areas that are

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 known species of concern extend to the ridgeline or
2 anywhere in proximity to the new location or the old
3 location for that matter.

4 MS. KELSEY: If I may respond here? Mr.
5 Libertine, that -- DEEP's letter to you regarding the
6 NDDB did not respond to you with a comment that there
7 were none of these particular species on the property.
8 What the letter correctly stated was that there were no
9 known. And there is a big difference between those two
10 statements.

11 CHAIRMAN STEIN: Could I --

12 MR. LIBERTINE: I stand corrected on the
13 semantics.

14 CHAIRMAN STEIN: Mr. Sinclair, your job is
15 to ask questions and not make rebuttal statements. I
16 mean you'll have an opportunity to rebut after all this
17 is done all you want --

18 MS. KELSEY: I apologize --

19 CHAIRMAN STEIN: -- but right now I would
20 appreciate it if you would ask questions.

21 MR. SINCLAIR: I beg your pardon, yes,
22 sir.

23 In our Question No. 45 to you asking you
24 to provide in feet the distances from the closest points

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 of (a) the compound area and (b) the access drive to any
2 amphibian habitat and provide a description and location
3 of the habitats, you respond the nearest wetland is
4 approximately 500 feet to the east/southeast and referred
5 to the wetland inspection report after Tab 3, which makes
6 no mention of amphibian habitat, concluding only that
7 there are no wetlands or watercourses located within or
8 approximate to the study area. How do you explain my
9 colleague Susan Kelsey finding a Red-Backed Salamander on
10 the peak of Cobble Hill this spring, Sunday, April 25th,
11 a considerable distance from your identified wetland
12 north of Barnes Road please?

13 MR. GUSTAFSON: I can address that. I
14 think that was our misinterpretation of association with
15 amphibians to wetland habitats, and that's why we
16 referenced the nearest wetland habitat.

17 You are correct there are upland
18 salamander species like the Red-Backed Salamander that
19 are very typical of those forest communities, and those
20 would be located within the proposed project area.

21 MR. SINCLAIR: So do you agree that
22 amphibians only spend a portion of their lifecycle in
23 wetlands and that their habitat requirement includes
24 uplands?

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. GUSTAFSON: That's -- that's correct.
2 There are certain amphibian species that spend the
3 majority of their lifecycle in wetlands. There are other
4 amphibian species like the Red-Backed Salamander that
5 spend a significant portion in the uplands.

6 MR. SINCLAIR: Thank you.

7 MR. GUSTAFSON: You're welcome.

8 MR. SINCLAIR: And do you agree that
9 amphibians, which breed in Robbins Swamp and adjacent
10 wetlands, do migrate to the surrounding uplands and could
11 conceivably occur in the vicinity of the access drive and
12 proposed tower site?

13 MR. GUSTAFSON: It would be more likely
14 that they would be in proximity to the proposed access
15 drive.

16 As far as the proximity from Robbins Swamp
17 to the top of Cobble Hill, you are at -- although there
18 is the potential they could migrate that far up the hill,
19 you are a considerable distance from Robbins Swamp, so
20 it's -- it's less likely that you'd see them on the top
21 of the hill as opposed to the proposed access drive,
22 certainly the entrance off of Barnes Road, and -- and
23 certainly we've worked on projects that have had those
24 concerns in the past and we've addressed those during the

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 development and management phase of the project should
2 the project be approved by the Siting Council. And some
3 of the typical protective measures that we recommend that
4 are often adopted as part of that D&M include the
5 installation of barriers to restrict amphibian
6 encroachment into the construction zone, daily sweeps by
7 a qualified scientist before construction begins that
8 morning, our contractor awareness program to make sure
9 that they're aware that they're working in a sensitive
10 area, and if they do encounter a turtle or a salamander,
11 how to handle it, how to move it out of the construction
12 zone, how to notify the environmental monitor. Those
13 type of measures can be employed to protect species
14 during construction in proximity to that type of
15 habitat.

16 MR. SINCLAIR: And it would be your intent
17 to employ those kinds of mitigation?

18 MR. GUSTAFSON: Those -- those would be my
19 recommendations. And I've made those recommendations to
20 this Council on similar projects in the past that have
21 been approved.

22 MR. SINCLAIR: It has been recently
23 reported to me on good authority that Five-Lined Skinks
24 have been seen on Cobble Hill. Now we are not able to

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 provide an affidavit regarding this sighting due to the
2 possibility of the individual's exposing himself to
3 trespass. Nonetheless, what attempts have been made to
4 establish, excuse me, whether this state threatened
5 species does not in fact inhabit this apparently suitable
6 Cobble Hill habitat?

7 MR. GUSTAFSON: We have not performed any
8 surveys for a Five-Lined Skink.

9 MR. SINCLAIR: AT&T -- thank you.

10 MR. GUSTAFSON: You're welcome.

11 MR. SINCLAIR: AT&T has made it clear in
12 its responses to the Inland Wetland and Conservation
13 Commission interrogatories that a thorough on-ground
14 inventory has not been conducted with regard to wildlife,
15 birds, mammals, amphibians, reptiles, as well as plants,
16 which assessment or lack thereof we concur. Please
17 explain how AT&T can assure that there will be no
18 significant or long-term disturbance to wildlife when you
19 really don't know what wildlife inhabits Cobble Hill?

20 MR. GUSTAFSON: I think some of our most
21 recent responses kind of on that same line of thinking or
22 questioning provides some assurance that there will not
23 be a significant adverse effect to wildlife based on the
24 type of development that's being proposed, with very low

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 traffic generation, it's unoccupied and it's uninhabited.
2 Various protective measures can be put in place during
3 construction because really for this type of development,
4 the greatest threat to wildlife is during construction of
5 the proposed facility. So certain protective measures
6 can be put in place to avoid and minimize impact to the
7 local wildlife.

8 MR. SINCLAIR: And -- and the fact is --
9 if I may follow up with a question -- you are aware of
10 course that one of the real dangers to wildlife, birds,
11 mammals, reptiles, and amphibians is fragmentation of the
12 -- of the forest canopy and of the forest floor. And
13 with an eighteen hundred foot road extending on the old
14 denied tower site to the new tower site, this road will
15 create quite a break along the ridge of Cobble Hill.
16 Have you taken that into consideration seriously?

17 MR. GUSTAFSON: Yes. And we actually
18 responded to that concern at length in our response to
19 Interrogatory 12, and that was from Siting Council
20 Interrogatory Set 2, dated May 14, 2013.

21 MR. SINCLAIR: And -- and what --
22 basically if you would summarize that response please?

23 MR. GUSTAFSON: Our -- our basic
24 conclusion is that according to U-Conn's analysis of

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 existing forest fragmentation there is what's considered
2 a large core forest block on Cobble Hill. There's also
3 an existing intrusion into that forest block which
4 relates to the field clearing in proximity to the cabin
5 up near the top of Cobble Hill. With the existing size
6 of the forest block -- and I'm just going to refer back
7 to some of the information we provided, it was
8 approximately 650 acres, the size of that forest block.
9 And there are various size designations that U-Conn
10 provided as far as the size fragmentation, and they
11 essentially small, large -- small, medium, and large core
12 forest. And a large core forest block is created in 500
13 acres. So this qualifies as being greater than 500
14 acres. So we ran an analysis and determined
15 conservatively that the proposed access road improvements
16 and extension and the compound would result in
17 approximately 70 acres of clearing, which would not
18 change the large core forest block designation. It would
19 still be greater 500 acres. And considering the existing
20 intrusion into that forest block, we felt that the
21 proposed development would not adversely affect that
22 existing forest block.

23 We also made recommendations as part of
24 that analysis with the understanding that the access

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 road, the linear length of it does certainly create an
2 intrusion into that forest block and almost the interior,
3 and understanding that the road -- even the gravel road
4 surface can have some essentially edge effect to wildlife
5 movement, and that's mainly related to the width of the
6 opening, the type of surface that's being used for the
7 road, also the amount of vehicle traffic, but also
8 changes of soil moisture characteristics, so we made some
9 recommendations to essentially enhance that opening to
10 minimize the edge effect that it would have. And with
11 incorporation of our recommendations, we felt that the
12 proposed development would not have an adverse effect on
13 wildlife as it relates to fragmentation of that forest
14 block.

15 MR. SINCLAIR: Well thank you, Mr.
16 Gustafson. Only one more question and this --

17 MR. GUSTAFSON: You're welcome --

18 MR. SINCLAIR: -- are you aware of the
19 recommendations of the Council on Environmental Quality
20 with regard to, if I may use the word, the sanctity of
21 core forest blocks and the sensitivity of those blocks to
22 any significant disturbance?

23 MR. GUSTAFSON: Yes. Yeah, I am aware of
24 their comments.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. SINCLAIR: Thank you very much.

2 MR. GUSTAFSON: You're welcome.

3 MR. LYNCH: Mr. Chairman.

4 CHAIRMAN STEIN: Mr. Lynch.

5 MR. LYNCH: Mr. Sinclair, if I may?

6 MR. SINCLAIR: Of course.

7 MR. LYNCH: Mr. Gustafson, I understand
8 Mr. Sinclair's and Miss Kelsey's concerns regarding the
9 construction of the facility and the access road. Is
10 there any plan in place to monitor this site and the
11 access road after the construction is completed and the
12 site is up and running as far as any damage to the
13 habitat or any loss of species or anything?

14 MR. GUSTAFSON: There is. And as part of
15 our analysis of the fragmentation of the forest block and
16 our recommendations -- because one of the -- and I didn't
17 get a chance to touch on it, but one of the potential
18 major concerns with improving this access road and
19 extending it further into the forest interior is that
20 there are existing invasive species along the perimeter
21 of the existing road that leads up to the cabin. So with
22 the construction and essentially extending that road, it
23 provides the potential vector for those invasive plant
24 species to infiltrate into the interior of the forest

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 block. So we've recommended that an invasive species
2 control management plan be employed during construction
3 and then for a period of five years of monitoring post-
4 construction. And there will be -- should the project
5 receive approval from the Council, during the development
6 and management phase we've put together specific
7 requirements of that plan. And that would include also a
8 performance standard that will be used to monitor for
9 that five-year period, such that if the performance
10 standards aren't met after five years for example and
11 there's still invasive species along the roadway or if
12 they encroach further into the interior of the project,
13 that monitoring period and control period would be
14 extended beyond five years until those performance
15 standards are met.

16 MR. LYNCH: Thank you.

17 MR. GUSTAFSON: You're welcome.

18 COURT REPORTER: One moment please.

19 (pause - tape change)

20 MR. SINCLAIR: Now with regard to tower
21 sites and coverage, on page 2 of AT&T's motion to the
22 Siting Council, it states that radio frequency engineer
23 consultants submitted in affidavits with the court that
24 there is still a need for a new tower facility in this

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 Falls -- in this area of Falls Village. Please specify
2 what this area is? And was the now approved tower site
3 on Route 7 south at the proposed fire station part of
4 that determination of need?

5 MR. WELLS: The need -- the need for the
6 site does consider the fire department as you say, which
7 is I believe Verizon Docket 360. That is and was
8 submitted as part of our coverage maps. It included that
9 site in there.

10 MR. SINCLAIR: Okay.

11 MR. WELLS: And even with that site, there
12 are still substantial gaps along Route 7 -- Route 7,
13 Route 63, Route 126, and the surrounding areas, and --
14 and of course Under Mountain Road as well.

15 MR. SINCLAIR: So -- okay, so you have --
16 thank you very much. Now in that same paragraph why do
17 you suggest that cell phone coverage is (1) necessary for
18 drivers in moving traffic; and (2) needed throughout an
19 extensive area of swamp land? Please excuse my attempt
20 to humor -- at humor -- do frogs require cell phones?

21 MR. WELLS: Well, I don't -- I don't
22 recall mentioning that we needed coverage in the swamp
23 land. I just said that the coverage areas are Route 63,
24 Route 7, Route 126, Under Mountain Road, and those

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 surrounding areas.

2 MR. SINCLAIR: I understand. However, the
3 -- Route 7 north from the intersection of Route 63 goes
4 through a vast swamp land that feeds into the -- into
5 Robbins Swamp and to the side of the road, Cobble Hill
6 being on one side and the Hollenbeck Brook being on the
7 other side, and the river being on the other side. That
8 is all swamp land. So is -- perhaps my conclusion from
9 the area is that it does go largely through swamp land -
10 -

11 MR. WELLS: Yeah, but I guess I would just
12 say that -- I guess I just don't quite agree with the
13 characterization that the objective is to cover swamp
14 land. I mean there are many important roads to cover, to
15 cover roadways or waterways and -- with still substantial
16 traffic on them.

17 MR. SINCLAIR: Okay, thank you. Also
18 please explain why you use moving traffic statistics to
19 justify the need for a tower on Cobble Hill when cell
20 phone use is prohibited while driving? What is the
21 maximum distance one must travel before coverage is
22 available?

23 MR. WELLS: I wasn't aware that using a
24 cell phone while driving was prohibited. I believe --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 and I'm a little out of -- you know, I don't want to talk
2 legal, but my understanding is that as long as you have a
3 headset, that you can talk while you drive. So, I don't
4 think that is prohibitive. And -- I'm sorry, I forgot
5 the second part of your question.

6 MR. SINCLAIR: The second was how far must
7 you travel before there is coverage available?

8 MR. WELLS: How far must you travel
9 where?

10 MR. SINCLAIR: On -- on these areas where
11 there is apparently no coverage.

12 MR. WELLS: The maps were submitted -- if
13 you could help me with a reference -- we submitted maps a
14 few times showing the gaps in the area. But I also do --
15 as I said in response to one of the Council's questions
16 at the last hearing that -- oh, thank you -- I have piles
17 of notebooks here and I'm trying to find my way around --
18 so if you'd refer to AT&T's response to Siting Council
19 interrogatories dated April 15th and the answer to
20 Question 19, that also supplements some more details on
21 roads and populations that are covered by the site, in
22 addition to the maps that I mentioned previously.

23 MR. SINCLAIR: With regard to the
24 alternative sites you have examined, why are you -- yes,

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 please clarify your process of establishing with the
2 property owners whether or not these were in fact
3 actually viable available sites?

4 MR. VIVIAN: Well -- this is Dave Vivian -
5 - the way that the process, the search process takes
6 place is that we're handed a search ring or an area to
7 locate a site. Typically what I do first is I survey
8 assessor's information for large tracts of land. For
9 instance, anything under say 20 acres would be considered
10 a non-viable site if a new cell tower is required. From
11 that, then I usually try to superimpose those large
12 tracts of land that are within the search ring and are
13 large tracts of land onto the topographical maps and come
14 up with coordinates of potential sites and feed those to
15 the RF engineers. They come back then and tell me what
16 sites work and what sites don't work. The sites that do
17 work after that process, we then send out mailings to
18 those landlords asking for interest.

19 MR. SINCLAIR: As a matter of
20 clarification, as I recall in a list of alternatives
21 sites that was provided -- and I don't remember how many
22 there were, but I know one of those --

23 MR. VIVIAN: Thirteen --

24 MR. SINCLAIR: Well one of those sites was

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 up a road next to us where that property is not available
2 at all. Another one was at the foot of a fellow's
3 driveway, who was a neighbor down the road. At what
4 point do you delineate or distinguish between sites that
5 you merely somehow have gone to look at and list those as
6 alternative sites, whereas you submit some sites to your
7 RF engineer or to whomever to determine whether they are
8 in fact viable? It -- it seems to me that the criteria
9 that's used for determining whether a site is in fact a
10 viable available site is to me quite mystifying, and I
11 think to other members of the commission.

12 MR. VIVIAN: Well I'm not sure how else I
13 can clarify the matter for you. What we do is we have an
14 area, a search area that's defined by the RF engineers.
15 We go to the assessor's maps and look for large parcels
16 if there are no existing facilities that will work. And
17 included actually in the original site search was the
18 approved Verizon tower. Even though that was outside the
19 search area, it was obvious -- it was an obvious thing to
20 take a look at. There were also some water tanks just up
21 the road. We also looked at the transfer station as a
22 potential town owned property, just down at the bottom of
23 Cobble Mountain. None of those sites worked from an RF
24 engineering perspective. Many that you're referring to

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 there, up on the north face from Under Mountain Road,
2 were large tracts of land with high elevation. And so
3 they were submitted to RF and they were rejected.

4 MR. SINCLAIR: Thank you very much for
5 your answer. Why -- okay -- why are you asking the
6 Connecticut Siting Council to accept a site which is
7 inferior to the site already rejected?

8 MR. WELLS: As I mentioned during the last
9 hearing -- and I forget what the date was -- the -- the
10 original site -- we can't get the original site, so we
11 have to make a compromise. So we made a change and
12 requested this location.

13 MR. VIVIAN: Yes we made a modification to
14 the proposal. We moved the site, what, twelve to
15 eighteen hundred feet. We moved it down to a plateau
16 with lower ground elevation so that there was actually
17 some existing forest that would add additional natural
18 screening from where you can see the proposed site. And
19 we reduced the height.

20 MR. SINCLAIR: Yet in your motion to
21 reopen, you ask for the Siting Council to reconsider
22 their decision on that other site. How does that follow
23 from what you've just told me?

24 MR. FISHER: Chairman, I believe that that

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 calls for a legal conclusion, but just to try to help,
2 the motion sought to reconsider the decision that
3 resulted in the conclusion of Docket 409, so we sought to
4 reopen the proceeding and proposed this modified
5 location. To the extent I can assist in any other way or
6 speak to your counsel to explain it, I'd be happy to.

7 MR. SINCLAIR: So then you're saying that
8 the motion was for the purposes of reopening the docket
9 and not for revisiting the decision on the site? I'm
10 sorry if I seem dense about this, but it -- it's been a
11 mystery to our entire commission.

12 MR. FISHER: Understood. The purpose of
13 AT&T submitting the motion was to allow, should the
14 Council decide, to consider changed conditions and this
15 specific modified condition and changes in the proposed
16 facility that we presented by way of this motion and the
17 subsequent materials. Procedurally in order to do that,
18 we had to submit a motion seeking to reopen the decision.
19 That is not in and of itself a request by AT&T to approve
20 the originally denied location.

21 MR. SINCLAIR: I understand. Thank you
22 very much.

23 And finally some questions having to do
24 with visibility. When asked by Professor Bell at the

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 April 30th hearing about the visibility of the Cobble
2 Hill tower from Under Mountain Road, your response -- and
3 I'm not sure who it was -- was it Mr. Libertine -- do you
4 remember --

5 MR. LIBERTINE: Yes --

6 MR. SINCLAIR: It was?

7 MR. LIBERTINE: Yes.

8 MR. SINCLAIR: Thank you. Your response,
9 Mr. Libertine, was that the tower would be viewed by
10 peripheral vision, except going down Barnes Road from
11 Under Mountain Road. Do you assume that passengers
12 cannot -- do not turn their heads or admire the view not
13 so pristine with the proposed 120-foot tower?
14 Nonetheless, we find your answer somewhat ingenuine.
15 Would you please explain?

16 MR. LIBERTINE: Well I think that may have
17 been part of an answer that came -- and my interpretation
18 from Dr. Bell's question was about along the roadway, and
19 I may have put myself in the position of a driver. I
20 think I also explained along that stretch that there were
21 homes and large pieces of property that would have views
22 of the tower. So it's kind of a combination of
23 everything. We -- we take into account as you're driving
24 and those vistas, and it's fairly clear from both the

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 materials on the view shed map and the photo simulations
2 that there are views from portions of both Under Mountain
3 Road and certainly the -- I'll call it the very northern
4 extent of Barnes Road as -- if one were traveling
5 southbound, then you would have Cobble Hill in your view
6 so to speak.

7 MR. SINCLAIR: The Town of Canaan zoning
8 regulations, page 31, provide -- provides a rationale for
9 including a steep slope overlay that states, quote, "the
10 extensive and essentially undisturbed slopes and ridges
11 are a defining feature of Canaan/Falls Village," end
12 quote. Why does AT&T apparently disregard the Town of
13 Canaan's stated philosophy?

14 MR. LIBERTINE: Well from my perspective,
15 I don't think we're disregarding anything. I think we
16 take into account a lot of different issues. One first
17 and foremost is the tower location has to work from a
18 radio frequency standpoint. And it's a very rugged
19 terrain out there. I am relying on the other experts on
20 the panel who ultimately come and bring forth a potential
21 site. So in this case the alternate locations that were
22 reviewed didn't work. This was a location that worked.
23 It happens to be, yes, on top of one of the higher
24 elevations in the area, but it certainly was by no means

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 a total disregard for the zoning requirements.

2 MR. SINCLAIR: Thank you for your answer.

3 MR. LIBERTINE: You're welcome.

4 MR. SINCLAIR: In summary, the Council on
5 Environmental Quality states, quote, "Cobble Hill is a
6 unique landform that rises out of a relatively flat
7 terrain, much of it wetland. This characteristic makes
8 it unlike the other hills in Northwestern Connecticut.
9 It's unique highly visible and unspoiled profile gives an
10 iconic status." Can AT&T explain why Cobble Hill does
11 not merit, as recommended by the CEQ, the extraordinary -
12 - quote -- "the extraordinary regulatory protection of
13 visual and ecological disturbances," end quote, such as
14 AT&T proposes?

15 MR. VIVIAN: Was that a question?

16 MR. SINCLAIR: It is. Can AT&T explain
17 why Cobble Hill does not merit such -- the extraordinary
18 regulatory protection from visual and ecological
19 disturbances? That's a quote from the CEQ. Please?

20 MS. CHIOCCHIO: You've got an opinion in
21 that question, so we don't necessarily share that opinion
22 --

23 COURT REPORTER: I'm sorry, could you move
24 that microphone --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. CHIOCCHIO: The question assumes that
2 we have an opinion that -- or the same opinion that the
3 Council on Environmental Quality shares, so it's not a
4 question we can answer.

5 MR. SINCLAIR: Okay. I turn the
6 questioning off to my colleague, Susan Kelsey.

7 MS. KELSEY: I'll try to be quick.

8 A VOICE: Move --

9 MS. KELSEY: Oh, I'm sorry. Okay. Most
10 of my questions are for Mr. Perkins regarding the access
11 drive. The last time you -- there was a lot of
12 discussion on soils and drainage ditches. And I got very
13 confused as to whether or not these two terms were used
14 synonymously or not or are swales specific areas --
15 typically a swale you think of as a low land that maybe
16 will hold water for a longer period of time. You have
17 swales in fields. So -- but -- most of your maps I think
18 are using swales to describe a drainage ditch. Am I
19 correct?

20 MR. PERKINS: That's correct.

21 MS. KELSEY: Okay. So there's no
22 difference. You use them interchangeably, drainage
23 ditches and swales?

24 MR. PERKINS: That's correct.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. KELSEY: So when you're talking about
2 your outlets of drainage ditches, your outlets pretty
3 much have -- I noticed you didn't have a cross section of
4 the outlets. So -- can I assume that the outlets really
5 are just kind of an extension of the drainage ditch
6 configuration pretty much?

7 MR. PERKINS: No. They --

8 MS. KELSEY: No?

9 MR. PERKINS: They flatten out --

10 MS. KELSEY: They do flatten out?

11 MR. PERKINS: Yes, they do.

12 MS. KELSEY: Okay. And this is the area
13 where you said you used the PIRA mat?

14 MR. PERKINS: That's correct.

15 MS. KELSEY: In the outlets -- okay. And
16 there was a lot of reference to -- apparently there's
17 another kind of matting you're using to. Is it different
18 from PIRA mat that you're supposedly -- I think you're
19 going to line all of drainage ditches, five-thousand feet
20 of it, or whatever, with another kind of matting? Is
21 that true?

22 MR. PERKINS: There is another kind of --

23 MS. KELSEY: TR -- TRM? Ramblock TRM 450
24 or something -- I don't know --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. PERKINS: That's correct.

2 MS. KELSEY: Okay. What's the different
3 between those two kind of mattings?

4 MR. PERKINS: It's the orientation of the
5 strands that are used in the mat.

6 MS. KELSEY: And why is there a
7 difference? And why is it important for you to use one
8 in one place and one in the other?

9 MR. PERKINS: One has greater energy
10 dissipation characteristics and resists greater shear
11 stress.

12 MS. KELSEY: And is that the PIRA mat?

13 MR. PERKINS: That's the PIRA mat,
14 correct.

15 MS. KELSEY: More dissipation -- okay.
16 Okay. You -- you're proposing to line all the swales
17 with this other matting. In some areas I'm sure you're
18 going to end up with having part of your swales along
19 bedrock. There's a lot of places where bedrock cuts
20 right close to the road. And I'm assuming you might use
21 that as one of the edges of your V-shaped ditches. If
22 that were the case -- or maybe you just need to answer
23 how do you attach these -- this matting in V-shaped or
24 trapezoidal drainage ditches? How do you attach it so

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 that it doesn't flop over?

2 MR. PERKINS: Right. In -- in that case
3 there's -- the bedrock is not susceptible to shearing
4 stresses from the water --

5 MS. KELSEY: So you wouldn't use any
6 there?

7 MR. PERKINS: So then it -- it -- it may
8 not be used there, that's correct.

9 MS. KELSEY: Okay. And so when you're
10 lining dirt ditches with this stuff, how do you anchor
11 it?

12 MR. PERKINS: It's -- stapled they call
13 them.

14 MS. KELSEY: And you're stapling in
15 relatively freshly disturbed dirt possibly? I mean --

16 MR. PERKINS: That's --

17 MS. KELSEY: -- you're creating a lot of
18 these ditches --

19 MR. PERKINS: Yeah --

20 MS. KELSEY: -- they're going to be new,
21 right?

22 MR. PERKINS: That sounds like that's
23 possible. Yeah, the ditch will be formed and then lined,
24 so yes.

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. KELSEY: And you staple them. You
2 staple matting to dirt. It's hard -- it's just hard for
3 me to envision the possibility of doing that, but -- what
4 do the staples look like?

5 MR. PERKINS: They're a U -- they look
6 like a regular staple. They're a U-shaped polymer based
7 bar let's call it, and it's about eight inches long and
8 it's pushed through the fabric into the underlying soil -
9 -

10 MS. KELSEY: So -- but -- but --

11 MR. PERKINS: -- at a certain interval --

12 MS. KELSEY: -- the hooks don't bend over
13 or anything? It just -- they just go straight in?

14 MR. PERKINS: They go straight in.

15 MS. KELSEY: Okay. Okay, you also
16 mentioned that the ditches are designed to function
17 without maintenance. I find it very hard to believe that
18 drainage ditches in a forested situation where you have
19 continual debris falling from trees, you have constant
20 branches falling, that there is not going to be constant
21 maintenance of these ditches. I personally have 3,000
22 feet of drainage ditches on my property and it is
23 constant maintenance. I just -- do you want to clarify
24 that at all? You really believe that -- what about this

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 leaf litter that accumulates? It's just going to wash
2 away? It's never going to get clogged by falling
3 branches?

4 MR. PERKINS: If -- yes, there is a
5 potential I suppose that a tree could fall across the
6 road --

7 MS. KELSEY: Or just a twig. A twig in a
8 V-shaped drainage ditch? It -- it only takes a six-inch
9 twig to get leaf litter behind it, and then it just jumps
10 right out and down the road.

11 MR. PERKINS: And the drainage patterns
12 would then return to natural or existing if they jump --

13 MS. KELSEY: After it --

14 MR. PERKINS: -- if they jump --

15 MS. KELSEY: -- washes out a considerable
16 amount of drive. Okay -- alright, you answered my
17 question. Okay.

18 Okay, on Figure C -- 4C -- and I believe
19 that must be in your answers to AT&T -- answers to the
20 Siting Council's interrogatories -- 4C maybe -- you show
21 water flowing on the south side of the road for a stretch
22 in what appears in that same area to be cutting,
23 resulting in a ditch -- okay, it's towards the bottom of
24 the page, section -- anyway, if you flip to 5C and to

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 that same area --

2 MR. VIVIAN: Could you -- excuse me, could
3 you just tell us which -- which set of interrogatory
4 responses you're --

5 MS. KELSEY: The one that kind of turned
6 into an application. Anyway, if you compare 4C to 5C --

7 MR. VIVIAN: Excuse me, we still need the
8 location.

9 MS. KELSEY: Okay -- okay.

10 MR. VIVIAN: Could you tell us which --
11 which tab --

12 MS. KELSEY: Okay --

13 MR. VIVIAN: -- it's under?

14 MS. KELSEY: 4C -- okay --

15 A VOICE: Is it the drainage report?

16 MS. KELSEY: It's a fold-up map.

17 MR. VIVIAN: We -- we've located it.

18 MS. KELSEY: What is it -- oh, here --
19 here. Okay. 4C. And then if you turn to an area, it's
20 about five inches up from the bottom of the page, there's
21 a long stretch there, and you can see that there is a
22 stream of water flowing down on the south side of the
23 road there and -- in addition to you've done a lot of
24 cutting, okay, and you have a stream of water flowing in

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 that area --

2 MR. PERKINS: I don't see a stream of
3 water flowing anywhere.

4 MS. KELSEY: You have arrows that typify
5 water flow --

6 MR. PERKINS: That's -- that's not a flow.
7 That's -- it's a representation of a length used in
8 calculations. It doesn't represent an actual stream.

9 MS. KELSEY: Oh, okay. So then when you
10 go to 5C and look in that same comparable area, you show
11 -- you show no swale there though, but you have cutting
12 that appears to me to -- that you've created a ditch. So
13 do you see how there's -- it's all blank there, there's
14 nothing. Where does any water flow in that whole stretch
15 of the road there? I mean should there not on 5C maybe
16 be a swale on the south side of the road for that pretty
17 long stretch or at least a portion of it?

18 MR. PERKINS: No, I don't believe so
19 because the water -- the contours that we looked at
20 indicate that the water is flowing almost parallel to the
21 road and not collecting at the edge of the road. So that
22 water is flowing northwest parallel to the road in that
23 section. So there's no defined ditch --

24 MS. KELSEY: Okay, so for that whole

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 stretch there, there's not going to be any swales to take
2 any water anywhere? I mean --

3 MR. PERKINS: Yes --

4 MS. KELSEY: -- it's about 300 or 400
5 feet?

6 MR. PERKINS: That's right. That's what
7 we have shown.

8 MS. KELSEY: That -- that's a long
9 distance to have nothing to divert any water, even if
10 it's water flowing directly onto the road. Well, okay,
11 you answered my question.

12 Okay -- let's see -- okay, you stated that
13 the current design of the outlets is a compromise between
14 a perfect solution of an infiltrator system and staying
15 within the 30-foot easement. Would you clarify the
16 impact of this compromise in regard to the water flow at
17 the outlets? How is it going to be different now since
18 you've had to compromise?

19 MR. PERKINS: We have less area --
20 ideally, we would have built maybe a retention type
21 riprap facility with a level spreader that would allow
22 more infiltration. This is going to be more in the lines
23 of what currently exists out there. So instead of trying
24 to build large collection drainage swales, we're going to

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 try to minimize the collection of water and try and get
2 it to flow as it does today with less impact.

3 MS. KELSEY: When all is said and done,
4 what's the road depth going to be?

5 MR. PERKINS: I'm not sure I know what you
6 mean.

7 MS. KELSEY: The improved road depth --
8 how much fill are you bringing in to cover it?

9 MR. PERKINS: The proposed road structure
10 consists of about 12 inches of gravel, about 9 inches of
11 Type A, I believe, and -- Connecticut DOT material, M0306
12 Type A, and then three inches of Type B on top of that.

13 MS. KELSEY: Okay, so -- not that this is
14 really all that relevant, but when you're putting the
15 culverts in, which is off the access-drive, you're
16 putting an 18-inch culvert in and you have a bed
17 underneath it and you have fill over top, so -- in those
18 areas you will be dealing with significantly greater than
19 a 12-foot road depth kind of, right?

20 MR. PERKINS: A 12-inch deep road you
21 mean?

22 MS. KELSEY: Right, because you -- if you
23 have an 18-inch culvert -- there's 18 inches right there,
24 right --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MR. PERKINS: Mmm-hmm --

2 MS. KELSEY: -- what you would consider
3 part of the road. And then you have -- I don't know if
4 it was six inches underneath. And then -- I forget how
5 much over the culvert -- was it 12 inches over the
6 culvert? So in some areas it's -- you're bringing in a
7 lot of fill? Maybe?

8 MR. PERKINS: It's -- it's really a
9 regrading of the existing conditions. And then where the
10 profile is higher elevation than the existing road,
11 that's where fill is brought in. But there's some
12 locations where the profile requires some redistribution
13 of the material that's already there. So it's not just
14 an automatic 12 inches of soil on top of what's there --

15 MS. KELSEY: So it can vary --

16 MR. PERKINS: Yes --

17 MS. KELSEY: -- the depth of the road --
18 okay. Okay, you testified that the changed profile of
19 the access drive more closely is going to match the
20 existing terrain rather than improving the geometry. By
21 not improving the geometry are you ending up with a
22 steeper road than the one designed for in 409?

23 MR. PERKINS: That's correct.

24 MS. KELSEY: Okay. At one time -- or in

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 409 there were areas which obviously went outside the 30-
2 foot right-of-way. And probably from one end of the fill
3 to the other side of the fill on the other side of the
4 road, you're talking a width in some areas probably
5 exceeding 70 feet, okay. I measured it, okay, so there -
6 - there were a couple of areas that you had intended to
7 utilize a width of 70 feet long to achieve what
8 apparently you thought at the time was a good grade. Now
9 that you have cut out 40 feet of this area, what impact
10 will this significant reduction in the cutting and fill
11 activity have on achieving an acceptable grade for both
12 the driveway and the slopes of the driveway?

13 MR. PERKINS: Well the grades increased --
14 I believe we had in 409 a 25 percent maximum grade. And
15 now our maximum proposed grade is 30.

16 MS. KELSEY: After improved?

17 MR. PERKINS: After, right.

18 MS. KELSEY: Yeah, okay. So could you --
19 in these areas where you really are limiting the cut and
20 fill activity that at one time you were going to go way
21 out, can you describe for me what the slopes are going to
22 look like in those areas? And how do you stabilize
23 them?

24 MR. PERKINS: Which slopes -- you're

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 referring to the grade of the road --

2 MS. KELSEY: No --

3 MR. PERKINS: -- or the sides --

4 MS. KELSEY: -- I'm talking about after

5 you --

6 MR. PERKINS: -- the drainage swales on

7 the side --

8 MS. KELSEY: -- after you improve the

9 driveway area, the two sides of the road -- or maybe in

10 some areas it's just going to be one edge that's going to

11 have very steep slopes I imagine --

12 MR. PERKINS: Right --

13 MS. KELSEY: -- and how do you stabilize

14 them?

15 MR. PERKINS: That's with the land-lock

16 material. We will -- we will put that --

17 MS. KELSEY: What you put in the drainage

18 ditches --

19 MR. PERKINS: -- we will put that material

20 on all the steep slopes.

21 MS. KELSEY: And you staple it?

22 MR. PERKINS: That's right.

23 MS. KELSEY: Okay. Okay. In the original

24 application for 409 CHA issued a safety report under Tab

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 5 and it mentioned the need for guardrails for safety
2 purposes. I did not see any mention of that in this new
3 road design. Do you still intend to install guardrails?

4 MR. PERKINS: No, we do not.

5 MS. KELSEY: You do not?

6 MR. PERKINS: That's right.

7 MS. KELSEY: Okay. I was wondering if
8 those -- if those -- if -- how you would install them in
9 this more narrow -- okay. Okay.

10 I'm going to skip some of this. Okay.
11 You mentioned that you were having buried telephone and
12 utilities. Could you explain the need for both of these
13 utilities and the specs that are required for the burial
14 of these utility cables?

15 MR. PERKINS: Well the need is to power
16 the site --

17 MS. KELSEY: Okay, so that's power. What
18 about telephone?

19 MR. PERKINS: And --

20 MR. VIVIAN: It's power and telephone.

21 MR. PERKINS: And the telephone -- it's
22 only aerial -- cell towers are only air from the hand-
23 held device to the tower and then they're land-lined from
24 there. So the telephone wire is --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. KELSEY: Oh, this is to connect -- oh
2 -- oh -- okay. Okay, because I -- I couldn't imagine why
3 you would need a phone -- a landline telephone up at a
4 cell tower, but -- okay, so that's -- it goes with the
5 whole network of cell phones -- or cell towers. They --
6 it's transferred to telephone lines?

7 MR. VIVIAN: Right --

8 MS. KELSEY: Okay, thank you --

9 MR. VIVIAN: -- when you're -- when you're
10 talking on your cell phone, it's going to a cell
11 facility. But each cell facility is wired just the same
12 as your phone in your kitchen.

13 MS. KELSEY: Thank you. Okay. Typically,
14 I think when you are going long distances with power, you
15 need transformers. I've heard distances of maybe 800
16 feet -- every 800 feet or whatever. I didn't see any
17 plans for transformers. Do you need them?

18 MR. PERKINS: Not --

19 MS. KELSEY: And if so, can you install
20 them on this squeezed in right-of-way?

21 MR. PERKINS: No -- to my knowledge,
22 transformers aren't required. Transformers are to jump
23 down the voltage from what's transmission voltage down to
24 house usage voltage --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. KELSEY: And since -- okay --

2 MR. PERKINS: So this -- there will be --
3 the transformer will be at the top, so there will only be
4 one transformer.

5 MS. KELSEY: Okay -- okay. Just a couple
6 more. Okay. There was testimony that the -- that the
7 entire access drive was going to be gravel. But
8 apparently there is approximately 30 feet of asphalt
9 apron as it approaches Barnes Road. And I'm just curious
10 as to why you do need to asphalt that section? You have
11 a schematic for it, a cross-section -- where is --

12 MR. PERKINS: Yeah, I -- we typically
13 provide a pavement -- a paved apron just as vehicles are
14 turning on to give the road more stability at that
15 location.

16 MS. KELSEY: Okay. Okay, I -- I'm
17 concerned about drainage leading up to Barnes Road, okay.
18 There's a distance, which I just very cursory measured to
19 be about 540 feet long, okay. So you have this drainage
20 ditch coming down a fairly steep driveway and then it --
21 there's an outlet, okay. And between the outlet and the
22 beginning of the asphalt apron there's a distance of
23 about 20 feet, okay. So -- it's kind of two questions --
24 what happens to the water that falls on the road between

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 the drainage ditch outlet in the beginning of the apron,
2 how's that water accommodated? And can 540 feet of water
3 during a storm really be accommodated in PIRA matting --
4 I don't know, I think maybe you proposed 30 feet in that
5 area -- and will -- will this water that maybe comes down
6 on the road onto the asphalt just really shoot out onto
7 Barnes Road since there's no culverts or anything
8 designed for the driveway entrance?

9 MR. PERKINS: We revised the design of the
10 roadway in that area in the response dated May 14th under
11 Tab 2, Figure C-02A --

12 MS. KELSEY: Mmm-hmm --

13 MR. PERKINS: -- we've gone to a single
14 slope cross-section on the roadway. And what that does
15 is not create a trench on what would be the east side of
16 the road, the drive access. And so what it will do is
17 mirror the existing slope and return the drainage
18 patterns to what would be natural. So we're not -- we're
19 not conveying water in a drainage ditch down to the
20 driveway entrance.

21 MS. KELSEY: I just have a very hard time
22 imagining all the water coming down that drainage ditch
23 being accommodated --

24 CHAIRMAN STEIN: Excuse me --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. KELSEY: -- between the end of the
2 outlet and --

3 CHAIRMAN STEIN: Excuse me, you said you
4 had a few questions. Could you define what a few --

5 MS. KELSEY: Well I can quit anytime --

6 CHAIRMAN STEIN: Well no, I want you to
7 finish, but first you said you'd be short and then you
8 said --

9 MS. KELSEY: Well --

10 CHAIRMAN STEIN: -- you had a few
11 questions --

12 MS. KELSEY: I'm sorry --

13 CHAIRMAN STEIN: -- and that was about a
14 half-hour ago, so -- if you'd like to --

15 MS. KELSEY: I can probably skip most of
16 these. Okay -- maybe -- (pause) -- Mr. Libertine, do you
17 ever consider in your visibility analyses temporal
18 changes in the landscape and areas?

19 MR. LIBERTINE: If -- if there's a pending
20 project that we're aware of, then we try to do that. But
21 for the most part we can't, only because it's -- it's a
22 snapshot of what's there today. I guess in the sense
23 that large areas that may be cleared for new development,
24 again if it's something that we're aware of, we will

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 often do that.

2 I guess the only temporal changes we often
3 do take into effect -- or actually we don't, but we
4 recognize that in some locations -- and I'm not saying
5 this is one of them, but the tree heights may increase if
6 we know there's a large stand of trees that may be
7 susceptible to some type of blight or, you know, that
8 type of thing, if there's a monoculture, we certainly try
9 to take that into account if we can.

10 But for the most part -- I guess the
11 easiest answer is no, we try to take a look at what's
12 there today with the understanding that yes things can
13 change, but it's kind of hard for us to predict that. So
14 those temporal changes are usually limited to something
15 that again is either of our knowledge or has been brought
16 to our attention that there's pending development or, as
17 I said earlier, we're aware of some type of a disease or
18 something that may be affecting -- usually more of a
19 monoculture. I know in the eastern part of the state
20 where I live there's a forest of Red Pines that has had -
21 - has been decimated in one of the state forests. And I
22 know we've taken that into account before where they've
23 diluted.

24 MS. KELSEY: Because what comes to my mind

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 is that -- I did -- I did notice a lot of Hemlock Woolly
2 Adelgid on the Hemlocks --

3 MR. LIBERTINE: Mmm-hmm --

4 MS. KELSEY: -- on Cobble Hill. So
5 they're going to be gone probably at some point. And
6 then I'm also thinking of the whole area pretty much
7 between Route 126 and Route 63 --

8 MR. LIBERTINE: Mmm-hmm --

9 MS. KELSEY: -- is not gradually, but
10 fairly rapidly being reverted to very open water beaver
11 swamp --

12 MR. LIBERTINE: Mmm-hmm --

13 MS. KELSEY: -- that used to be all
14 wetland forest. You couldn't -- you couldn't begin to
15 see over to the South Canaan Church, the Meetinghouse.
16 And now it's almost you have a clear shot. It's totally
17 open almost. So I was just wondering if -- if you did
18 take that into consideration?

19 MR. LIBERTINE: Well, we certainly in this
20 case did not take into consideration looking at a 10 or
21 15-year, you know, progression down the road. So no --
22 no, we did not.

23 MS. KELSEY: Okay -- okay. One moment --
24 let me pick one more -- okay -- you also testified that -

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 - that the road to the site is already there. And
2 therefore, you know, it wouldn't -- there wouldn't be any
3 great impact to wildlife. But on the Map C-02E where
4 it's -- where it's showing the section of the road from
5 the cabin to the tower site, I mean we -- we have
6 descriptions of the road as an abandoned four-by-four
7 trail and existing path. And so -- I mean it's --
8 between the cabin and the tower site, which is probably
9 at least -- I don't know -- I'm saying eighteen hundred
10 feet -- you are basically in many places creating a new
11 roadway. It's, you know, I mean a path. I was up there
12 yesterday and I could not -- I think you would all be
13 amazed -- you could not even follow the trail down to
14 the tower site, it -- because of all the understorey there
15 --

16 MR. LIBERTINE: I don't disagree that --
17 certainly now that it's --

18 MS. KELSEY: -- so I do --

19 MR. LIBERTINE: Did you want me to respond
20 or was there a question?

21 MS. KELSEY: Well you can respond if you
22 want to.

23 MR. LIBERTINE: Well I'm not sure --

24 COURT REPORTER: One moment --

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 MS. KELSEY: Do you -- do you --

2 COURT REPORTER: One moment.

3 CHAIRMAN STEIN: Yeah, could you just --
4 (pause - tape change)

5 CHAIRMAN STEIN: It's going to be --
6 really it's going to be a new track or road --

7 MR. LIBERTINE: I think --

8 CHAIRMAN STEIN: -- it's not existing in
9 that area --

10 MR. LIBERTINE: From my recollection, my
11 response to the question was that there is an existing
12 path there today that has been used, it has been logged,
13 not recently, but certainly has been used, and is used to
14 access other portions of the property. Granted there are
15 going to be trees taken down to expand that road, but
16 there are several large trees of mature height that are
17 going to be maintained within that corridor. So it was
18 my opinion that although there would be some new work in
19 that area, that it would not be substantial from an
20 impact standpoint. There would still be sufficient
21 canopy maintained in a lot of those areas. Not in all
22 obviously because it has to do with what specific trees
23 are where. But again, I guess my only point was that
24 we're not blowing in a brand new road into an area that

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

1 has not been already in some way altered. I guess that
2 was really what I was trying to get my point across.

3 MS. KELSEY: Okay, thank you. Thank you.

4 CHAIRMAN STEIN: Okay. Thank you very
5 much.

6 So I'd like to announce that we will
7 continue this evidentiary portion of the hearing at the
8 Council's offices in New Britain -- is it here -- at the
9 Council's offices on Tuesday, June 11, 2013 at 1:00 p.m.
10 Please note anyone who has not become a party or
11 intervenor, but who desires his or her views to be known,
12 may file written statements with the Council until the
13 record closes.

14 Copies of the transcript of this hearing
15 will be filed in the Canaan Town Clerk's Office.

16 And I hereby declare this portion of the
17 hearing adjourned. Thank you.

18

19 (Whereupon, the hearing adjourned at 3:43
20 p.m.)

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

INDEX OF WITNESSES

PAGE

ROVEZZI WITNESS PANEL:

Guy Rovezzi

Direct Testimony	6
Cross-Examination by Council Members	10

TOWN OF CANAAN INLAND WETLANDS AND
CONSERVATION COMMISSION WITNESS PANEL:

Ellery Sinclair
Susan Kelsey
Walter Cooper
Dave Gumbart
Richard Calkins
Starling Childs
Greg Marlowe

Verification of Exhibits by the Chairman	15
Cross-Examination by Council Staff	18, 50
Cross-Examination by Council Members	30
Cross-Examination by Mr. Fisher	56

APPLICANT WITNESS PANEL:

Dean Gustafson
Michael Libertine
Anthony Wells
Peter Perkins
David Vivian

Direct Examination by Ms. Chiocchio	103
Cross-Examination by Mr. Rovezzi	105
Cross-Examination by Mr. Sinclair	112
Cross-Examination by Ms. Kelsey	143

HEARING RE: NEW CINGULAR WIRELESS
MAY 21, 2013

INDEX OF TOWN OF CANAAN INLAND WETLANDS
AND CONSERVATION COMMISSION EXHIBITS

	NUMBER	PAGE
Prehearing Brief	1	18
Meeting Minutes of CSC 3/7/13	2	18
Memorandum of Decision on Cross Motions For Summary Judgment	3	18
Stipulation Withdrawing Appeal from Active Consideration Without Prejudice, With Leave to Reactivate	4	18
Annual Precipitation Connecticut	5	18
Prefiled Testimony of W. Cooper	6	18
Prefiled Testimony of R. Calkins	7	18
Prefiled Testimony of G. Marlowe	8	18
Prefiled Testimony of D. Gumbart	9	18
Prefiled Testimony of S. Childs	10	18
Responses to CSC Interrogatories	11	18

INDEX OF APPLICANT EXHIBITS

	NUMBER	PAGE
Responses to CSC Interrogatories, Set 2	6	105
Updated Responses to CSC Interrogatories, Set 2	7	105